

1 ALVERSON, TAYLOR,
 2 MORTENSEN & SANDERS
 3 KURT R. BONDS, ESQ.
 Nevada Bar #6228
 4 DAVID ROTHENBERG, ESQ.
 Nevada Bar #13576
 5 7401 W. Charleston Boulevard
 Las Vegas, NV 89117
 (702) 384-7000
efile@alversontaylor.com
 6 *Attorneys for Third-Party Defendant*
(named herein as a "Cross-Defendant"),
 7 *Southern Highlands Community Association*

8 UNITED STATES BANKRUPTCY COURT

9 DISTRICT OF NEVADA

* * *

10 In re Case No.: BK-S-16-16593-ABL
 11 ALESSI & KOENIG, LLC, Adv. Case No.: 17-01032
 Chapter 7

12 Debtor.

13 CKVC INVESTMENTS LLC,

14 Plaintiff.

15 vs.

16 SANDRA A. BOBE: AND IVAN D.
 17 WINDER: AND NATIONSTAR
 MORTGAGE LLC; AND SOUTHERN
 HIGHLANDS COMMUNITY
 ASSOCIATION: AND ROYAL
 HIGHLANDS STREET AND LANDSCAPE
 MAINTENANCE CORPORATION; AND
 THE BANK OF NEW YORK MELLON
 FKA THE BANK OF NEW YORK, AS
 SUCCESSOR TRUSTEE TO JPMORGAN
 CHASE BANK, N.A., AS TRUSTEE FOR
 THE HOLDERS OF SAMI II TRUST 2006-
 AR7, MORTGAGE PASS-THROUGH
 CERTIFICATES, SERIES 2006-AR7; AND
 MORTGAGE ELECTRONIC
 REGISTRATION SYSTEMS, INC.; DOES I-
 V, INCLUSIVE, ROE CORPORATIONS I-
 V,

**MOTION TO REMAND ACTION TO
NEVADA STATE COURT**

Date of Hearing: na

Time of Hearing: na

Place:

Judge: Hon. August B. Landis

ALVERSON, TAYLOR, MORTENSEN & SANDERS
 LAWYERS
 7401 WEST CHARLESTON BOULEVARD
 LAS VEGAS, NEVADA 89117-1401
 (702) 384-7000

1 INCLUSIVE,

2 Defendants.

3 THE BANK OF NEW YORK MELLON FKA
4 THE BANK OF NEW YORK AS
5 SUCCESSOR TRUSTEE TO JPMORGAN
CHASE BANK, N.A., AS TRUSTEE FOR
6 THE HOLDERS OF SAMI II TRUST 2006-
AR7, MORTGAGE-PASS THROUGH
CERTIFICATES, SERIES 2006-AR7,

7 Counter-claimant,

8 vs.

9 CKVC INVESTMENTS, LLC,

10 Counter-defendant

11 THE BANK OF NEW YORK MELLON FKA
12 THE BANK OF NEW YORK AS
13 SUCCESSOR TRUSTEE TO JPMORGAN
CHASE BANK, N.A., AS TRUSTEE FOR
14 THE HOLDERS OF SAMI II TRUST 2006-
AR7, MORTGAGE-PASS THROUGH
CERTIFICATES, SERIES 2006-AR7,

15 Cross-Claimant

16 vs.

17 SOUTHERN HIGHLANDS COMMUNITY
ASSOCIATION; and ALESSI & KOENIG,
LLC,

18 Cross-Defendants

20 **MOTION TO REMAND ACTION TO NEVADA STATE COURT**

21 COMES NOW, the SOUTHERN HIGHLANDS COMMUNITY ASSOCIATION (the
22 “Association”), the involuntarily removed third party who hired Debtor ALESSI & KOENIG,
23 LLC (“Debtor” or “Alessi”) for their expertise to properly conduct foreclosure auctions, though
24

1 their counsel, and hereby move pursuant to 28 U.S.C. §§ 1447(c) and 1452(b) and for an order
 2 remanding to the Eighth Judicial District Court, Clark County, Nevada, any and all claims and
 3 causes of action removed by BANK OF AMERICA, N.A. (the “Bank”) pursuant to the Notice of
 4 Removal filed herein on March 8, 2017. See ECF No. 181.¹

5 The removals sought by the Bank and by the other Banks² in this bankruptcy case are
 6 nothing more than blatant forum shopping: in state courts the Banks are likely to lose their cases.
 7 Beginning on February 8, 2016, less than two weeks after the January 26, 2016 decision by the
 8 Nevada Supreme Court in *Saticoy Bay*³ the Banks began to remove hundreds of State Court
 9 actions⁴ to escape the *Saticoy Bay* ruling. They want to litigate these cases in the Bankruptcy
 10 Court because they believe that a beneficial Ninth Circuit’s ruling in *Bourne Valley*⁵ will provide
 11 a more favorable outcome. *See, e.g.*, ECF Nos. 94 at 3, 108 at 3, 117 at 3 (Motions for
 12 Determination, asserting no justification for removal beyond forum shopping based on the
 13 Bourne Valley ruling).

14 ///

15 ///

16 1 References to documents in this Court’s record are to “ECF No. X at Y” where “X” is the
 17 docket number and “Y” is the document’s page number. References to the state court records
 18 annexed to the notices of removal filed herein are to “ECF No. X, Ex. Y, PDF p. Z” where “X”
 19 is the docket number, “Y” is the Exhibit number, and “Z” is electronic PDF page number
 20 assigned by the CM / ECF system on the document’s header. The Federal Rules of Bankruptcy
 21 Procedure are referred to herein as “FRBP”. The Federal Rules of Civil Procedure are referred
 22 to herein as “FRCP”. The Nevada Rules of Civil Procedure are referred to herein as “NRCP”.

23 2 The term “Banks” as used herein collectively refers to the financial institutions and loan
 24 servicers that have removed or intend to remove to this Court various Nevada state court lawsuits
 concerning non-judicial foreclosure proceedings.

25 3 *Saticoy Bay LLC Series 350 Durango 104 v. Wells Fargo Home Mortgage, a Div. of Wells*
 26 *Fargo Bank, N.A.*, 133 Nev. Adv. Op. 5, 388 P.3d 970, 2017 WL 398426 (Nev. Jan. 26, 2017).

27 4 The term “State Court actions” as used herein collectively refers to the state court proceedings
 28 concerning non-judicial foreclosures which the Banks have removed or intend to remove to this
 29 Court, including the one sought to be removed by U.S. Bank in ECF No. 228.

30 5 *Bourne Valley Court Trust v. Wells Fargo Bank, NA*, 832 F.3d 1154 (9th Cir. 2016).

MEMORANDUM OF POINTS & AUTHORITIES

I.

RELEVANT FACTS AND PROCEDURAL HISTORY

1. On May 7, 2015, Plaintiff CKVC INVESTMENTS LLC commenced this action in the Eighth Judicial District Court for Clark County, Nevada by filing a Complaint to Quiet title. *See*, ECF No. 181, Ex. 1.

2. On June 23, 2015, the Association was dismissed as a Defendant without prejudice by CKVC. *See*, ECF No. 181, Ex. 17. In response, on July 9, 2015, the Bank filed its Answer and Cross-Claim against the Association. *See*, ECF No. 181, Ex. 24.

3. According to the Bank's Cross-Claim, the only claim that the Bank has really asserted against this moving Third-Party Defendant is that it failed to comply with statutory non-judicial foreclosure procedures, in particular the notice provisions of NRS Chapter 116. *See*, ECF No. 181, Ex. 24, at ¶¶ 59-68. The Bank has also alleged that the Association was unjustly enriched by any funds received from the HOA foreclosure sale above the super-priority amount of its lien. *Id.* at ¶¶ 58-63.

4. The property in question is located within the Association at 10852 Fishers Island, Las Vegas, Nevada 89141 (the “subject property”) and not related to debtor. Id. at ¶ 3. The borrowers failed to pay the monthly association fees to the Association, and as a result, the Association’s collection counsel, Debtor, recorded a Notice of Delinquent Assessment (Lien) as part of its efforts to collect the outstanding amount due. Id. at ¶ 19.

5. Alessi then filed a Notice of Default and Election to Sell. Id. at ¶ 20. Alessi recorded a Notice of Trustee's Sale. Id. at ¶ 22.

6. These foreclosures have resulted in extensive litigation in both Nevada State District Courts and Federal District Courts.

1 7. Alessi was a law firm that conducted foreclosure sales for many homeowners
 2 associations on their liens, including this involuntarily removed Association. Debtor
 3 commenced the instant case under Chapter 7 of title 11 of the United States Code on December
 4 13, 2016. *See*, ECF No. 53.

5 8. On November 17, 2016 the Court denied all parties' Motions for Summary
 6 Judgment. *See*, ECF No. 56.

7 9. On December 1, 2016, at the pre-trial conference, the trial in this matter was
 8 already continued once to allow the parties to prepare. On February 9, 2017, the Bank brought up
 9 its intent to remove this matter during the continued pre-trial calendar call, after the ruling in
 10 *Saticoy Bay*, and the matter was stayed until the bankruptcy stay could be lifted. *Id.*

11 10. The Nevada Supreme Court has interpreted 116.3116 et seq. ("NRS Chapter
 12 116") to give homeowners associations a "super priority" lien on a homeowner's property for up
 13 to nine months of unpaid association dues, which extinguishes all junior interests in the property,
 14 including a mortgage lender's first deed of trust. *See, SFR Investments Pool 1 v. U.S. Bank*, 334
 15 P.3d 408 (Nev. 2014).

16 11. On August 12, 2016, a divided Ninth Circuit panel issued its decision in *Bourne*
 17 *Valley*. There, a divided panel of the Ninth Circuit held that Nevada Revised Statutes Chapter
 18 116's so-called "opt-in" non-judicial foreclosure notice procedure, "facially violated mortgage
 19 lenders' constitutional due process rights." *Id.*, 832 F.3d at 1160.⁶ The *Bourne Valley* majority
 20 opinion did not address the fact that the Supreme Court of Nevada had already construed NRS
 21 Chapter 116 as incorporating notice to the mortgage lenders in various ways independent of the

22 6 *See, id.* at 1156 ("We hold that the Statute's 'opt-in' notice scheme, which required a
 23 homeowners' association to alert a mortgage lender that it intended to foreclose only if the lender
 24 had affirmatively requested notice, facially violated the lender's constitutional due process rights
 under the Fourteenth Amendment to the Federal Constitution.")

1 so-called “opt-in” procedure. Even the dissenting justices in *SFR* agreed that the Nevada
 2 Supreme Court’s acknowledgement of the other forms of notice was the proper interpretation of
 3 Nevada’s statutory scheme. *See, SFR*, 334 P.3d at 422. Further, the Supreme Court of Nevada
 4 has already concluded that NRS 116 does not offend due process. *Id.* at 418.

5 12. On January 26, 2017, the Nevada Supreme Court held in *Saticoy Bay* that the
 6 foreclosure procedures set forth under NRS 116.3116 et seq. are Constitutional and the Banks’
 7 arguments related to due process fail because of no state actor.⁷

8 13. In *Saticoy Bay*, the Nevada Supreme Court restated its interpretation of NRS
 9 116.3116(4). Because the Nevada Supreme Court construed the statute as a whole, it concluded
 10 that “[the bank] ‘was on notice that by operation of the statute, the [earlier recorded] CC&Rs
 11 might entitle the HOA to a super priority lien . . . which would take priority over a [later
 12 recorded] first deed of trust.’” *Saticoy Bay*, 2017 WL 398426 at *4 (quoting *SFR*, 334 P.3d at
 13 418 (alterations in original)). Because the Nevada Supreme Court rejected the statutory
 14 interpretation relied on in *Bourne Valley* and found that due process was not implicated, the
 15 statutory interpretation of Nevada law in *Saticoy Bay* is now controlling. Pursuant to Ninth
 16 Circuit precedent, *Saticoy Bay* is an “intervening decision on controlling state law by a state
 17 court of last resort.”⁸

18 7 *Saticoy Bay LLC Series 350 Durango 104 v. Wells Fargo Home Mortgage*, 133 Nev. Advance
 19 Opinion, No. 68630 (Nev. Jan. 26, 2017).

20 8 *Miller v. Gammie*, 335 F.3d 889, 892-893 (9th Cir. 2003) (“where the reasoning or theory of
 21 our prior circuit authority is clearly irreconcilable with the reasoning or theory of intervening
 22 higher authority, [a court] should consider itself bound by the later . . . and reject the prior circuit
 23 opinion as . . . overruled.”); *United States v. Swisher*, 771 F.3d 514, 524 (9th Cir. 2014); *CRST
 24 Van Expedited, Inc. v. Werner Enterprises, Inc.*, 479 F.3d 1099, 1106 n.6 (9th Cir. 2007); *High v.
 Ignacio*, 408 F.3d 585, 590 (9th Cir. 2005) (“This court accepts a state court ruling on questions
 of state law.”); *Rotec Indus., Inc. v. Mitsubishi Corp.*, 348 F.3d 1116, 1122 n.3 (9th Cir. 2003);
Cal. Teachers Ass’n v. State Bd. of Educ., 271 F.3d 1141, 1146 (9th Cir. 2001); *Pershing Park
 Villas Homeowners Ass’n v. United Pac. Ins. Co.*, 219 F.3d 895, 903 (9th Cir. 2000); *Owen v.
 United States*, 713 F.2d 1461, 1464 (9th Cir. 1983) (Ninth Circuit’s interpretation of Nevada law

1 14. The Ninth Circuit's *Bourne Valley* ruling and the Nevada Supreme Court's
2 *Saticoy Bay* ruling are in direct conflict and certiorari proceedings as to both cases are now
3 pending before the United States Supreme Court.⁹

4 15. The Banks waited until February 8, 2017 to file a motion to lift the stay in an
5 effort to remove the matter from state court. See, e.g., ECF Nos. 94 at 3, 108 at 3, 117 at 3

6 16. On March 8, 2017, the Bank filed a removal action to bring the matter to this
7 Court under the guise of resolving the bankruptcy. *See*, ECF No. 181.

II.

LEGAL ARGUMENT

10 | A. LEGAL STANDARDS

11 The removing party bears the burden of establishing federal jurisdiction and that removal
12 was proper. *See Abrego Abrego v. The Dow Chem. Co.*, 443 F.3d 676, 684 (9th Cir. 2006) (It is
13 “a longstanding, near canonical rule that the burden on removal rests with the removing
14 defendant.”) (citations omitted); *see also Gaus v. Miles, Inc.*, 980 F.2d 564,566 (9th Cir. 1992)
15 (“The ‘strong presumption’ against removal jurisdiction means that the defendant always has the

17 is “only binding in the absence of any subsequent indication from the [Nevada] courts that our
18 interpretation was incorrect.”); *see also Bonilla v. Adams*, 423 F. App’x 738, 740 (9th Cir. 2011)
19 (“We are required to follow intervening decisions of the [Nevada] Supreme Court that interpret
state law in a way that contradicts our earlier interpretation of that law.”); *Henderson v. Pfizer, Inc.*, 285 F. App’x 370, 373 (9th Cir. 2008) (“a state supreme court can overrule us on a question
of state law”); *see also O’Brien v. Skinner*, 414 U.S. 524, 531 (1974) (“It is not our function to
construe a state statute contrary to the construction given it by the highest court of a State.”).

20 9 Bourne Valley Court Trust will be filing a certiorari petition with the United States Supreme
21 Court. See Dkt. No. 72-1, Bourne Valley Court Trust v. Wells Fargo Bank, N.A., No. 15-15233
22 (9th Cir. 2016) (filed Nov. 9, 2016). On January 30, 2017, the United States Supreme Court
23 granted Bourne Valley Court Trust's motion to extend time to file its petition for writ of
24 certiorari until April 3, 2017. See Bourne Valley Court Trust v. Wells Fargo Bank, NA., Case
No. 16A753 (Sup. Ct. 2016) (filed Jan. 30, 2017). On February 8, 2017, the Nevada Supreme
Court granted a stay of remittitur in Saticoy Bay based on Wells Fargo's stated intent to file a
petition for writ of certiorari to the U.S. Supreme Court. Case No. 68630, Order Granting Motion
to Stay Remittitur (Nev. Feb. 8, 2017).

1 burden of establishing that removal is proper.”). In determining whether the removing party has
 2 satisfied this burden, federal courts construe removal statutes, like other jurisdictional statutes,
 3 strictly because federal courts are courts of limited jurisdiction, and the rights of states are to be
 4 respected.¹⁰

5 Applying these principles, district courts have strictly construed the removal provision in
 6 28 U.S.C. § 1452(a). *See, e.g., Lipoderm inst., Inc. v. Moca Holdings, LLC*, No. CV 10-02389-
 7 RGK, 2010 WL 1708848, at *1 (C.D. Ca. April 27, 2010) (where the defendants had removed an
 8 action based upon § 1452(a), the court stated that the “Ninth Circuit has held unequivocally that
 9 the removal statute is construed strictly against removal” and remanded the action to Los
 10 Angeles Superior Court because removal was improper). Finally, because federal courts strictly
 11 construe removal statutes, all doubts are resolved in favor of remand. *Gaus*, 980 F.2d at 564,
 12 566.

13 A federal bankruptcy court can consider, *sua sponte*, its jurisdiction over the subject
 14 matter and whether to remand the matter to the state court and does not have to rely upon a
 15 motion by any party to remand a case under § 1452(b). *See Driggers v. Exchange Parts (In re*
 16 *Exchange Parts*), 138 B.R. 585, 586 (Bkrcty.W.D.Ark.1992); *Smith v. City of Picayune*, 795
 17 F.2d 482 (5th Cir.1986). The numerously persuasive equitable considerations in this matter favor
 18 that the State Court Action should be tried in its original forum and therefore this Court should
 19 remand this matter. Chief among these considerations is the blatant forum shopping on the part
 20 of the removing party.

21 ///

22 10 *See Syngenta Crop Prot., Inc. v. Henson*, 537 U.S. 28, 32 (2002); *Kokkonen v. Guardian Life*
 23 *Ins. Co. of Am.*, 511 U.S. 375,377 (1994); *Shamrock Oil & Gas Corp. v. Sheets*, 313 U.S. 100,
 108–09, (1941); *Healy v. Ratta*, 292 U.S. 263, 270 (1934); *Matthews v. Rodgers*, 284 U.S. 521,
 525 (1932); *Valdez v. Allstate Ins. Co.*, 372 F.3d 1115, 1117 (9th Cir. 2004); *Gould v. Mutual*
 24 *Life Ins. Co. of N.Y.*, 790 F.2d 769, 773 (9th Cir. 1986).

1 A bankruptcy court's broad power to remand is provided in 28 U.S.C. § 1452(b). Section
 2 1452(b) provides that "a court to which an action is removed may remand the action on 'any
 3 **equitable ground.'**" *In re Roman Catholic Bishop of San Diego*, 374 B.R. 756, 761 (Bankr. S.D.
 4 Cal. 2007) (emphasis added). "This 'any equitable ground' remand standard is an unusually
 5 broad grant of authority. It subsumes and reaches beyond all of the reasons for remand under
 6 nonbankruptcy removal statutes." *McCarthy v. Prince*, 230 B.R. 414, 417 (BAP 9th Cir. 1999)
 7 (citing *Chambers v. Marathon Home Loans*, 96 B.R. 296, 299-300 (Bankr. E.D. Cal. 1989). No
 8 exceptional or special circumstances are required. *Roman Catholic Bishop of San Diego*, 374
 9 B.R. at 761. The standard for remand is not statutorily defined. However, case law has provided
 10 "factors" to assist with the remand decision. See *In re Enron Corp.*, 296 B.R. 505, 508-9
 11 (C.D.Cal.2003).

12 The Ninth Circuit considers a range of factors in determining whether to remand on
 13 equitable grounds. These factors include: 1) the likelihood that the commencement of the
 14 proceeding in bankruptcy court involves forum shopping by one of the parties; 2) the effect or
 15 lack thereof on the efficient administration of the estate if the Court recommends remand; 3) the
 16 extent to which state law issues predominate over bankruptcy issues; 4) comity; 5) jurisdictional
 17 basis, if any, other than § 1334; 6) presence of related proceeding commenced in state court or
 18 other nonbankruptcy proceeding; 7) the degree of relatedness or remoteness of state court
 19 proceeding to main bankruptcy case; 8) the substance rather than the form of an asserted core
 20 proceeding; 9) the feasibility of severing state law claims from core bankruptcy matters to allow
 21 judgments to be entered in state court with enforcement left to the bankruptcy court; 10) the
 22 existence of a right to a jury trial; 11) difficult or unsettled nature of applicable law; 12) the
 23 burden on the bankruptcy court's docket; 13) the presence in the proceeding of nondebtor
 24

1 parties; and 14) the prejudice to the party involuntarily removed from state court.¹¹

2 While these factors can assist a court's decision, they are not requirements and no one
 3 factor is required because the standard remains that **any** equitable ground is enough to remand.
 4 *In re Roman Catholic Bishop of San Diego*, 374 B.R., at 762. Further, “[w]hen a state court
 5 proceeding sounds in state law and bears a limited connection to a debtor's bankruptcy case,
 6 abstention is particularly compelling.” *In re Enron Corp.*, 296 B.R. at 509 (quoting *In re United*
 7 *Container LLC*, 284 B.R. 162 (Bankr.S.D.Fla.2002)). Here, nearly all of the equitable factors
 8 strongly favor remand.

9 **B. THE APPLICATION OF EQUITABLE FACTORS IN THIS MATTER
 10 STRONGLY FAVOR REMAND**

11 **1. The Commencement of This Proceeding in Bankruptcy Court Involves
 12 Blatant Forum Shopping by the Bank**

13 This first factor is fully in favor of remand as the Bank removed this matter for the sole
 14 purpose of forum shopping.¹² Courts will remand a matter if there appears to be forum shopping,

15 11 See, *In re Cedar Funding, Inc.*, 419 B.R. 807, 820 n.18 (9th Cir. BAP 2009)(citing *In re*
 16 *Enron Corp.*, 296 B.R. 505, 508 n.2 (C.D. Cal. 2003)); *Brown v. Affiliated Computer Servs.*, No.
 17 C08-5367 FDB, 2008 WL 2856854, at *2 (W.D. Wash. July 21 2008) (citing *In re Cytodyn of*
 18 *NM, Inc.*, 374 B.R. 733, 738 (Bankr. C.D. Cal. 2007) and *Citigroup, Inc. v. Pac. Inv. Mgmt. Co.*,
 19 296 B.R. 505, 508 (C.D. Cal. 2003)). See also *In re Tucson Estates*, 912 F.2d 1162 (9th Cir.
 20 1990).

21 12 See, e.g., ECF No. 328 at 7:16-20, Motion to Set Case Management Conference (Bank of
 22 America, N.A., attaching list of *all removed state court actions herein to date*, stating, “A
 23 dispositive question in each removed action is whether the Debtor's foreclosure, conducted
 24 pursuant to a statute that the Ninth Circuit deemed unconstitutional, could have extinguished the
 first deed of trust; or whether, as BANA believes, such deed of trust was not extinguished and
 continues to encumber the property. See *Bourne Valley*, 832 F.3d at 1160. A determination on
 the facial due process violation inherent in the Debtor's foreclosure sales would dispose of a key
 issue in all of the removed cases.”); see also ECF No. 94 at 3, Motion for Determination (Bank
 of America, N.A.); ECF No. 108 at 3 Motion for Determination (Caliber Home Loans, Inc., Fay
 Servicing, LLC, Nationstar Mortgage, LLC, Bayview Loan Servicing, LLC, Select Portfolio
 Servicing, Inc., Carrington Mortgage, Citibank, Shellpoint Mortgage Servicing, Ocwen Loan
 Servicing, LLC, Specialized Loan Servicing, LLC, BSI Financial Services, Inc., Residential
 Credit Solutions, Inc., Seterus, Inc., and Ditech Financial, LLC (see ECF. No. 107 at 7-15
 (identified under column entitled “Lender Entity”)); ECF No. 117 at 3, Motion for Determination

1 even from the mere removal after losing a Motion for Summary Judgment. *In re Schempp Real*
 2 *Estate, LLC*, 303 B.R. 866, 878 (Bankr. D. Colo. 2003).

3 Here, the Banks have removed hundreds of State Court actions merely to avoid the
 4 Nevada Supreme Court's ruling in *Saticoy Bay*, and to exploit non-dispositive case law based on
 5 the Ninth Circuit's ruling in *Bourne Valley*. The Banks' removal of this matter only came about
 6 after the Nevada Supreme Court rendered its decision in *Saticoy Bay* on January 26, 2017, whose
 7 outcome is completely opposite of *Bourne Valley*.¹³ This matter was not even stayed in state
 8 court after the debtor's Bankruptcy on December 13, 2016, but done quickly after the decision in
 9 *Saticoy Bay* was rendered at the continued pre-trial conference.

10 The Nevada Supreme Court held in *Saticoy Bay* that there is no state actor involved in a
 11 foreclosure sale and therefore the Bank's due process claims, as well as similar claims, fail in
 12 state court. While the Nevada Supreme Court's determination of absence of state action in
 13 *Saticoy Bay* devastated the vast majority of claims by the Banks in the State Court actions, the
 14 true impact of the case concerned its determination on notice. In *Saticoy Bay*, the Nevada
 15 Supreme Court restated its interpretation of NRS 116.3116(4). It construed the statute as a
 16 whole, concluding that "[the bank] 'was on notice that by operation of the statute, the [earlier
 17 recorded] CC&Rs might entitle the HOA to a super priority lien . . . which would take priority
 18 over a [later recorded] first deed of trust.'" *Saticoy Bay*, 2017 WL 398426 at *4 (quoting *SFR*,
 19 334 P.3d at 418 (alterations in original)). This rendered the lack of notice defense based on
 20 *Bourne Valley* on which the Banks have relied to argue that the non-judicial foreclosures sales
 21 did not divest them of their interest in the foreclosed properties under their deeds of trust moot;
 22 the very defense which they rely on for their proposed omnibus dispositive motion is now

23 (PennyMac Loan Services, LLC, Nationstar Mortgage, LLC, Bayview Loan Servicing, LLC).

1 meritless. *See* n.14, *supra*, and accompanying text.

2 In an effort to preserve its claims, the Bank is now seeking non-dispositive federal law by
 3 forum shopping under the guise of efficient administration of the debtor's bankruptcy. The
 4 Banks' hope is that this Court will follow their attempts to muddy the waters by taking positions
 5 in relation to NRS Chapter 116's non-judicial foreclosure statutes that will conflict with those of
 6 the Nevada Supreme Court in *Saticoy Bay* on matters of dispositive state law that are prejudicial
 7 to the Banks. In light of the Bank's forum shopping, this factor alone should provide sufficient
 8 equitable ground to remand this matter.

9 **2. The Lack of Efficient Administration of the Estate if the Court Retains This
 10 Matter Favors Remand**

11 The second factor weighs in favor of remand because of the factual and legal issues that
 12 must be resolved prior to any resolution of the claims. Bankruptcy courts have remanded cases
 13 where "absent a settlement of the claims, prompt resolution of these claims through the
 14 bankruptcy process is unlikely." *In re Roman Catholic Bishop of San Diego*, 374 B.R. 756, 762
 15 (Bankr. S.D. Cal. 2007); *see also, Brown*, 2008 WL 2856854, at *2 ("Additionally, remand of
 16 this action will not ... affect the administration of any bankruptcy estate because it is the outcome
 17 of the case, not whether the claims are tried in state or federal court, that may have repercussions
 18 in bankruptcy.").

19 Here, the resolution of which party has an interest in the real property is not central to the
 20 administration of the Debtor's bankruptcy case because the debtor has no interest in the property.
 21 Prompt resolution of these claims through the bankruptcy process is unlikely as the claims have
 22 already been going on for years in state court. Further, the Bank's main due process claim was
 23 settled in state court prior to it removing this matter, which now requires re-litigation and
 24 additional discovery to argue the applicability of conflicting federal law, which is not even

1 dispositive. Moreover, the Bank admits in the financial entities' Motion to Set Confirmation
 2 Hearing that all these matters are too much for the Court's docket. See, ECF No. 329.

3 In addition to the scope of the prejudice heaped upon the involuntarily removed parties
 4 and this Court resulting from the Bank's removal of this matter, the Banks have made clear their
 5 intention to remove not only this case, but every state court case in which Debtor is a party based
 6 on its operations as a trustee.¹⁴ The cases will number in the hundreds. The Banks' will likely
 7 file several dozen more notices of removal *after* the deadline. See ECF Nos. 147, 148. As of the
 8 date of this filing, over 150 notices of removal have been filed. This Court will suffer the burden
 9 of having to oversee and administer these State Court actions which are each fact specific and
 10 will not benefit the estate, the Debtor, or the creditors. Retention of this matter will be
 11 devastating to the efficient administration of the bankruptcy estate, weighing strongly in favor of
 12 remand.

13 **3. State Law Issues Predominate Over Bankruptcy Issues, Which Favor
 14 Remand**

15 This third factor is fully in favor of remand as the entire issue is regarding Nevada State
 16 law. State law issues not only predominate in this litigation; all claims are based on state law,
 17 with no unique federal bankruptcy issues. Specifically, the center issue to this and all related
 18 matters is regarding NRS 116.3116 and the foreclosure of the subject real property. The Nevada
 19 Supreme Court has already addressed and resolved the issue of constitutionality in *Saticoy Bay*,
 20 finding NRS 116.3116 to be Constitutional and does not violate due process.

21 Both *Bourne Valley* and *Saticoy Bay* are being submitted for certiorari to the United
 22 States Supreme Court. No matter how the pending certiorari proceedings are resolved, the

23 14 See n.14, *supra*; see also ECF No. 130 at 32-53, 64-66 (Debtor's Schedules listing 209
 24 actions in the Nevada District Courts, and one in Las Vegas Justice Court). Also listed are 174
 additional cases currently pending in Nevada Real Estate Division Mediation which likely will
 soon end up in the Nevada District Courts. See *id.* at 66-82.

1 question of how to apply Nevada's non-judicial foreclosure system post-*Bourne Valley* and how
 2 *Saticoy Bay* applies will be a question that must ultimately be resolved by the state courts, not a
 3 federal court, and that state ruling will be binding on this Court.¹⁵ Further, this issue is
 4 dispositive in state court and the remaining claims are fact specific to this case. There are no
 5 bankruptcy issues that need to be determined before the case can be tried. Further, the State trial
 6 and appellate courts are absolutely competent to handle the issues surrounding the state law
 7 claims in this case. As such, this factor weighs in favor of remand.

8 **4. The Interests of Comity Towards State Court Favor Remand**

9 This fourth factor is in favor of remand as not doing so would outright render the Nevada
 10 Supreme Court's decision in *Saticoy Bay* meaningless in state court. Comity arises from the
 11 deference of one sovereign to another and "focuses on the state's interest in developing its law
 12 and applying its law to its citizens." *ML Media Partners, L.P. v. Century/ML Cable Venture (In*
 13 *re Adelphia Communications Corp.)* 285 B.R. 127, 136–137 (Bankr.S.D.N.Y.2002) (citing
 14 *Renaissance Cosmetics*, 277 B.R. at 16); River Center Holdings, 288 B.R. at 70. A state court's
 15 familiarity with the issues also favors remand under comity. *Shibboleth v. Yerushalmi*, 412 B.R.
 16 113, 118 (S.D.N.Y. 2009) In *Shibboleth* remand was warranted because the state court had greater
 17 familiarity with the issues after two years of being on the docket. *Id.* at 121.

18 Comity and the resolution of state law questions by state courts favors remand.
 19 *Thomasson v. AmSouth Bank, N.A.*, 59 B.R. 997, 1002 (N.D.Ala.1986)(The presence of facts
 20 supporting abstention, when coupled with related considerations of comity and preference for the
 21 resolution of state law questions by state courts, implied in section 1452(b), "tips the scales of

22 15 See n.9, *supra*; see also, e.g., *Long Beach Area Peace Network v. City of Long Beach*, 574
 23 F.3d 1011, 1016 (9th Cir. 2009) ("We remand to allow the district court to determine whether the
 24 unconstitutional provisions are severable from the remainder of § 5.60"); see also *Arizona
 Libertarian Party v. Bayless*, 351 F.3d 1277, 1283 (9th Cir. 2003). Severability is a question of
 state law. *Leavitt v. Jane L.*, 518 U.S. 137, 139 (1996).

1 equity in favor of remand..."); *In re Hilsman*, 351 B.R. 209, 217 (Bankr.N.D.Ala.2006). State
 2 courts have more expertise in interpreting state law, which weighs in favor of remand. *In re*
 3 *Enron Corp.*, 296 B.R. 505, 509 (C.D. Cal. 2003). "The presence of federal constitutional
 4 defenses already unsuccessfully litigated does not cause the federal government to have an
 5 equally compelling interest." *In re Roman Catholic Bishop of San Diego*, 374 B.R. 756, 764
 6 (Bankr. S.D. Cal. 2007). Remand based on deference to state court is appropriate when the
 7 removed action was "already scheduled for trial before the state court." *In re Wolford*, No. 2:15-
 8 AP-01530-RK, 2016 WL 65791, at *3 (Bankr. C.D. Cal. Jan. 4, 2016).

9 Here, the central issue in the State Court actions is Nevada's non-judicial foreclosure
 10 statutes. This matter was filed over a year ago and is based on state law. The Bank removed this
 11 matter after Saticoy Bay, after the close of discovery and dispositive motions, during the parties'
 12 preparation of trial on March 13, 2017. The Nevada Supreme Court has already resolved any
 13 constitutional issues of due process in *Saticoy Bay* prior to this removal. The Banks'
 14 unsuccessful litigation of that issue does not warrant a second chance under more favorable
 15 federal law. The only issues that remain (ownership and interest in land) are questions of state
 16 law, which Nevada has a compelling interest in because the land is located in Nevada and most
 17 of the parties reside within Nevada. Further, this matter was preparing for trial, which Nevada
 18 also has an interest in resolving under state law.

19 The Banks' federal constitutional defenses were already unsuccessfully litigated in front
 20 of the Nevada Supreme Court. While both *Bourne Valley* and *Saticoy Bay* are currently before
 21 the Supreme Court in certiorari proceedings, whatever happens in those certiorari proceedings, it
 22 is the Nevada state courts that will have to finally resolve the operation of Nevada's non-judicial
 23 foreclosure statutes. As such, comity strongly favors the state court forum over the federal court.

24 ///

1 **5. The Jurisdictional Basis of This Matter Renders This Factor, at Best, Neutral**

2 The fifth factor is, at best, neutral. Courts have viewed this factor as neutral even when
 3 there is “no question that this court could retain the litigation in bankruptcy court as related to the
 4 bankruptcy case, pursuant to 28 U.S.C. § 1334.” *In re Peak Web LLC*, 559 B.R. 738, 743 (Bankr.
 5 D. Or. 2016), *aff’d sub nom. Mach. Zone, Inc. v. Peak Web, LLC*, 16-03083-PCM, 2017 WL
 6 517796 (D. Or. Feb. 7, 2017).

7 Here, the Bank’s claims in the State Court action are quieting title, declaratory relief, and
 8 unjust enrichment. See ECF No. 181, Ex. 24. All the State Court actions are based solely on
 9 state law grounds. The Nevada District Courts have original jurisdiction over the subject matter
 10 of the State Court actions under the Nevada Constitution, Art. 6, sec. 6, and NRS 4.370 and
 11 venue is proper there under NRS 13.010(a). Whether or not there is a basis for diversity
 12 jurisdiction is not an important factor in deciding whether to remand in this case. While this
 13 court could retain the litigation in bankruptcy court as related to the bankruptcy case, there are no
 14 federal law claims, only defenses. This factor is, at best, neutral.

15 **6. The Presence of Related Proceeding Commenced in State Court or Other
 16 Non-bankruptcy Proceeding Favors Remand**

17 The sixth factor weighs in favor of remand. This factor weighs against remand when
 18 there are no other related proceedings in state court. See, *In re Doctors Hosp. 1997, L.P.*, 351
 19 B.R. 813, 848 (Bankr. S.D. Tex. 2006). Remand is warranted when the nature of bankruptcy
 20 proceeding was not initiated by the party in this adversary proceeding as a claim against the
 21 estate, but as a counterclaim to a state law cause of action. *In re Republic Reader's Serv., Inc.*, 81
 22 B.R. 422, 429-430 (Bankr. S.D. Tex. 1987). This factor further favors remand when there are
 23 “other related nonbankruptcy proceedings pending between these and other parties in state
 24 court.” *In re Schempp Real Estate, LLC*, 303 B.R. 866, 877-879 (Bankr. D. Colo. 2003). This

1 factor also takes into account how long the state court proceedings have been taken place. *Id.*

2 Here, there are no core proceedings, only issues that are related to the bankruptcy, which
 3 have several similar matters still in state court. The nature of this matter is not founded in
 4 bankruptcy as the proceedings began over a year before the debtor declared bankruptcy, and
 5 removed after discovery had ended and dispositive motions submitted. Similar to the related
 6 proceeding commenced in state court in *Schempp Real Estate*, the matters here have been going
 7 on for years between the parties in various cases. Indeed, there are hundreds more similar cases
 8 pending in the state courts right now to which Debtor is not a party. As such, this factor favors
 9 remand.

10 **7. The Degree of Relatedness and Remoteness of the State Court Proceeding to
 11 the Main Bankruptcy Case Favors Remand**

12 The seventh factor weighs in favor of remand. It is relevant to consider whether the
 13 adversary proceeding is “core” or “non-core.” *Eastport Associates v. City of Los Angeles (In re
 14 Eastport Associates)*, 935 F.2d 1071, 1076 (9th Cir.1991). There are three ways a proceeding
 15 may be classified as core: first, as a case “arising under title 11,” 28 U.S.C. § 157(b)(1); second,
 16 as a case “arising in a case under title 11,” *Id.*; and third, under 28 U.S.C. § 157(b)(2), which
 17 provides a non-exhaustive list of core proceedings. *In re Wolford*, No. 2:15-AP-01530-RK, 2016
 18 WL 65791, at *2 (Bankr. C.D. Cal. Jan. 4, 2016). Proceedings that would have arisen regardless
 19 of a debtor’s bankruptcy are not based on any provision of title 11 and not typically considered
 20 core. *In re Enron Corp.*, 296 B.R. 505, 509 (C.D. Cal. 2003).

21 Here, the state law claims under NRS 116 do not merit “arising under” or “arising in”
 22 jurisdiction, nor do they fall under any of the categories listed in 28 U.S.C. § 157(b)(2). The
 23 proceedings in this matter arose regardless of bankruptcy because the matter was originally filed
 24 in State court on May 7, 2015. At that time, the Alessi had not declared bankruptcy and was not a

1 party. Debtor was merely the foreclosure trustee who conducted the foreclosure sale, and whose
2 relevance in the context of notice under Nevada's non-judicial foreclosure statutes has been
3 further diminished by both the *Bourne Valley* and *Saticoy Bay* rulings. Further, the Bank waited
4 until on February 9, 2017, almost two months after the Debtor declared bankruptcy, to bring up
5 its intent to remove this matter during the continued pre-trial calendar call in preparation of trial,
6 which is after the ruling in *Saticoy Bay*, and the matter was stayed until the bankruptcy stay
7 could be lifted. It was over a year after the original filing date that Alessi & Koenig filed for
8 bankruptcy. This action is based on state law claims of wrongful foreclosure with no nexus to the
9 bankruptcy court other than that one of defendants is the Debtor in the bankruptcy case. As such,
10 this matter is a non-core proceeding and this factor favors remand.

8. The Substance Rather Than the Form of an Asserted Core Proceeding is Irrelevant in This Case as There is No Core Proceeding

For the previously stated reasons, the eighth factor is irrelevant because this is a non-core proceeding. As such, this factor is, at best, neutral.

9. There Are No Core Bankruptcy Matters and State Court Judgments Can be Enforced in Bankruptcy Court; Favoring Remand

16 The ninth factor, if anything, weighs in favor of remand because there is no reason why a
17 judgment obtained in state court cannot be brought back to this Court for enforcement. As argued
18 above, the state court proceedings are not core to the bankruptcy and major issues were resolved
19 by the Nevada Supreme Court in *Saticoy Bay* prior to this removal. As such, this factor favors
20 remand.

10. The Deprivation of a Right to a Jury Trial Favors Remand

22 The tenth factor is either neutral or weighs in favor of remand because the right to a jury
23 trial does not require remand, but it does weigh in favor of remand. *In re Peak Web LLC*, 559
24 B.R. 738, 744 (Bankr. D. Or. 2016), *aff'd sub nom. Mach. Zone, Inc. v. Peak Web, LLC*, No. 16-

1 03083-PCM, 2017 WL 517796 (D. Or. Feb. 7, 2017).

2 Here, no party has requested a jury trial, which makes this factor neutral.

3 **11. The Simple and Settled Nature of Applicable State Law as Compared to**
Federal law Favors Remand

4 The eleventh factor favors remand as Courts tend to favor remand when the legal or
5 factual issues in a matter are complex or novel. *In re Peak Web LLC*, 559 B.R. 738, 742–43
6 (Bankr. D. Or. 2016), aff'd sub nom. *Mach. Zone, Inc. v. Peak Web, LLC*, No. 16-03083-PCM,
7 2017 WL 517796 (D. Or. Feb. 7, 2017).

8 Here, although this Court is capable of resolving issues of state law, this matter concerns
9 complex legal and factual issues if retained. Prior to removal, the Nevada Supreme ruled in
10 *Saticoy Bay* that there is no state actor to warrant due process or similar claims, which ends the
11 matter. However, the Bank wants to use the Ninth Circuit Court of Appeal's decision in *Bourne*
12 *Valley* to argue that there is a state actor and their due process rights were violated. However,
13 *Bourne Valley* will not settle this matter; it only makes it much more complex.

14 Further, if *Bourne Valley* were applied, it would merely mean the prior version of an
15 unconstitutional statute would be used, which would require litigation of every case individually
16 because of the various issues that are factually specific to this and other cases.

17 Even the federal courts within this district cannot agree on whether or how to apply
18 *Bourne Valley* as to Nevada's non-judicial foreclosure statutes. One federal judge in this district
19 has embraced *Bourne Valley*'s pronouncements,¹⁶ while five other federal judges in this district
20 have expressed their direct disagreement with the Ninth Circuit's gloss on the state law issues
21 addressed in *Bourne Valley*.¹⁷ Most recently, yet another federal judge in this district has taken

23 16 See *U.S. Bank, N.A. v. SFR Invs. Pool 1, LLC*, No. 3:15-cv-00241-RCJ-WGC, 2016 WL
24 4473427, at *6 (D. Nev. Aug. 24, 2016).

17 See *Las Vegas Dev. Grp., LLC v. Yfantis*, ___ F. Supp. 3d ___, No. 2:15-cv-01127-APG-

1 issue with *Bourne Valley* and asserted that it did nothing to alter the fact that due process does
 2 not require actual notice, and that reasonable notice of the trustee's sale to the bank was
 3 sufficient to cure any constitutional defect inherent in NRS 116.31163(2) even under the *Bourne*
 4 *Valley* ruling.¹⁸

5 Further, this matter has been in state court for over a year and Motions for Summary
 6 Judgment prior to Saticoy Bay were denied, which show the legal and factual issues are not
 7 simple. Otherwise, this matter would have been resolved long ago. Several matters related to
 8 these HOA foreclosure cases have been appealed to the Nevada Supreme Court.¹⁹ The main
 9 issues and claims have now been resolved through binding authority in state law. Remanding this
 10 matter to state court will keep it simple, while keeping it in Bankruptcy Court under Federal
 11 Court will keep it complex. As such, this factor weighs in favor of remand.

12. The Burden on the Bankruptcy Court's Docket Favors Remand

13 The twelfth factor weighs in favor of remand since litigation of non-core state law issues
 14 raised in the lawsuit would burden this court in light of the absence of the need to litigate such
 15 issues for the administration of this bankruptcy case. *In re Wolford*, No. 2:15-AP-01530-RK,
 16 2016 WL 65791, at *3 (Bankr. C.D. Cal. Jan. 4, 2016). Further, significant pretrial matters that

17 CWH, 2016 WL 1248693, at *3-6 (D. Nev. Mar. 24, 2016) (Gordon, J.); *Morgan Chase Bank v.*
 18 *SFR Investments Pool 1*, 2:14-cv-02080-RFB-GWF, 2016 WL 4084036, at *8 (D. Nev. July 28,
 19 2016) (Boulware, J.); *Capital One v. Las Vegas Dev. Group*, No. 2:15-cv-01436-JAD-PAL,
 20 2016 WL 3607160, at 5 (D. Nev. June 30, 2016) (Dorsey, J.); *Bank of Amer. V. Rainbow Bend*
HOA, No. 3:15-cv-00291-MMD-WGC, 2016 WL 12998114, at *3 (D. Nev. Mar. 31, 2016) (Du,
 21 J.); *Deutsche Bank v. TBR I, LLC*, No. 3:15-cv-00401-LRJ-WGC, 2016 WL 3965195, at *3 (D.
 22 Nev. July 22, 2016) (Hicks, S.J.).

23 18 See, e.g., *Bank of America, N.A. v. SFR Investments Pool 1, LLC, et al.*, U.S. District Court,
 24 District of Nevada, Case No. 2:15-cv-1768-JCM-CWH, ECF No. 88 at 17:12-19:2.

19 See, e.g., *Saticoy Bay LLC Series 350 Durango 104 v. Wells Fargo Home Mortg., a Div. of*
Wells Fargo Bank, N.A., 388 P.3d 970 (Nev. 2017); *Shadow Wood HOA v. N.Y. Cnty. Bancorp.*,
 20 132 Nev. Adv. Op. 5, 366 P.3d 1105 (2016); and *SFR Investments Pool 1 v. U.S. Bank*, 130 Nev.
 21 Adv. Op. 75, 334 P.3d 408 (2014).

1 will take “a significant amount of the trial judge's time, whether matters of discovery disputes,
 2 motion practice, or the like”, favor remand. *In re Peak Web LLC*, 559 B.R. 738, 743–44 (Bankr.
 3 D. Or. 2016), *aff'd sub nom. Mach. Zone, Inc. v. Peak Web, LLC*, No. 16-03083-PCM, 2017 WL
 4 517796 (D. Or. Feb. 7, 2017). While a bankruptcy court is certainly capable of resolving such
 5 disputes, “the bankruptcy court's role is ordinarily focused on issues arising under bankruptcy
 6 law and managing the reorganization process, not conducting complex litigation.” *Id.*

7 Here, this litigation will be devastating to this Court's docket if it were retained. The
 8 involuntarily parties have not consented to any entry of final judgment by the bankruptcy judge.
 9 As such this court would need to conduct all pre-trial matters. Each of these cases is factually
 10 and procedurally unique, and will require individual attention, individualized briefing, and likely,
 11 discovery. This Court has no prior knowledge of the parties or the case and would have to
 12 become familiar with the parties, as well as the factual and legal issues specific to this case. The
 13 resolution of this matter does not arise under bankruptcy, but is merely related to the bankruptcy
 14 because the Debtor is a named party. Further, resolving the issues will involve matters beyond
 15 managing the reorganization process, including, but not limited to, the applicability and effect of
 16 federal law in light of whether the Bank received actual notice, resolving the Bank's actual
 17 notice, and the determination of equitable relief between all parties. Moreover, as discussed
 18 above, *supra*, contrary to the Bank's belief, *Bourne Valley* is not applicable in all cases and is
 19 not dispositive. As such, this factor weighs in favor of remand.

20 **13. The Presence of the Association and the Buyer as Non-Debtor Parties in the
 21 Proceeding Favors Remand**

22 The thirteenth factor weighs in favor of remand. “The presence of other non-debtor
 23 parties would weigh in favor of abstention [or remand].” *In re Asousa Partnership*, 264 B.R.
 24 376, 391 (Bankr. E.D. Pennsylvania. 2001). Further, Courts have found this matter at best neutral

when only the debtor and another party are present. See, *Id.*

Here, there are parties in this action other than Debtor and the removing party. The Association and the Buyer both have no claims against the Debtor in this matter and neither party is a Debtor. Removing hundreds of state court cases that involve non-debtor parties is disruptive, unnecessary, and unfair to the non-debtor parties. The rights of these non-debtor parties to redress in state court will be circumvented, and their ability to obtain timely and complete resolution of their pending issues in the chosen state forum will be prejudiced and delayed. Debtor will not receive a discharge here, and the Trustee has admitted that this is a no-asset case, and that she will not be intervening in any litigation on Debtor's behalf to bring any benefit to the estate. *See* ECF No. 331. As such, this factor weighs in favor of remand.

14. The Prejudice to the Party Involuntarily Removed from State Court Favors Remand

This factor weighs in favor of remand as the parties involuntarily removed from state court can no longer take advantage of state law. Courts will generally remand when a plaintiff is prejudiced by the loss of their chosen forum. *Spaulding v. Mingo County Bd. of Educ.*, 897 F. Supp. 284, 288 (D. W. Va. 1995)([G]reat weight is given to the plaintiff's chosen forum and legitimate doubts as to the existence of federal jurisdiction must be resolved against removal and in favor of remand).

Here, the original Plaintiff CKVC Investments initially brought this matter in state court, which the Bank never attempted to remove. Further, discovery had ended and the trial in this matter was already continued once and this matter was stayed at the pre-trial calendar call. If this matter had been left in state court it would have already been litigated by the time this remand is resolved. *See*, ECF No. 181, Ex. 56. The Bank now seeks to circumvent the fact that their claims are no longer viable under state law and attempting to escape trial by treating each case as

1 exactly the same under *Bourne Valley*. Further, retention of this matter would require new
 2 discovery to gather facts from the Bank that was previously not required to build a defense in
 3 state court, such as proof of actual notice. As such, this factor would weight in favor of remand.

4 **B. CONSOLIDATION OF THIS OR RELATED CASES WOULD RESULT IN
 5 UNPRECEDENTED PREJUDICE TO THE OTHER PARTIES IN THIS
 6 MATTER**

7 Many parties, including the Association in this matter, had pending dispositive motions
 8 or on the eve of trial that the Banks knew about and are now attempting to deprive with such a
 9 consolidation. In this matter, as is likely with others, dispositive motions were already filed and
 the parties were preparing for trial.

10 Contrary to the Bank's position, *Bourne Valley* is in no way dispositive in this matter,
 11 assuming it is even applicable. Each and every case has different facts that would prevent the
 12 applicability for *Bourne Valley*. Specifically, many claims could be time barred based on when
 13 the Bank knew of the claims or the Bank could have received actual notice rendering *Bourne*
 14 *Valley* moot. Indeed, as argued above, even the Federal Court's within this district cannot agree
 15 on whether or how to apply *Bourne Valley* as to Nevada's non-judicial foreclosure statutes. One
 16 federal judge in this district has embraced *Bourne Valley*'s pronouncements,²⁰ while five other
 17 federal judges in this district have expressed their direct disagreement with the Ninth Circuit's
 18 gloss on the state law issues addressed in *Bourne Valley*.²¹ Most recently, yet another federal

19
 20 20 See *U.S. Bank, N.A. v. SFR Invs. Pool 1, LLC*, No. 3:15-cv-00241-RCJ-WGC, 2016 WL
 4473427, at *6 (D. Nev. Aug. 24, 2016).

21 21 See *Las Vegas Dev. Grp., LLC v. Yfantis*, ___ F. Supp. 3d ___, No. 2:15-cv-01127-APG-
 22 CWH, 2016 WL 1248693, at *3-6 (D. Nev. Mar. 24, 2016) (Gordon, J.); *Morgan Chase Bank v.*
SFR Investments Pool 1, 2:14-cv-02080-RFB-GWF, 2016 WL 4084036, at *8 (D. Nev. July 28,
 2016) (Boulware, J.); *Capital One v. Las Vegas Dev. Group*, No. 2:15-cv-01436-JAD-PAL,
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HOA, No. 3:15-cv-00291-MMD-WGC, 2016 WL 12998114, at *3 (D. Nev. Mar. 31, 2016) (Du,
 23 J.); *Deutsche Bank v. TBR I, LLC*, No. 3:15-cv-00401-LRJ-WGC, 2016 WL 3965195, at *3 (D.
 24 Nev. July 22, 2016) (Hicks, S.J.).

1 judge in this district has taken issue with *Bourne Valley* and asserted that it did nothing to alter
 2 the fact that due process does not require actual notice, and that reasonable notice of the trustee's
 3 sale to the bank was sufficient to cure any constitutional defect inherent in NRS 116.31163(2)
 4 even under the *Bourne Valley* ruling.²²

5 This Banks' contention that the State Court actions can be disposed of in this Court with
 6 some sort of consolidated "partial" summary judgment motion relating to the *Bourne Valley*
 7 ruling is particularly absurd. *See, e.g.*, ECF No. 328 at 7-8. The Banks' proposal for some
 8 omnibus motion is nothing more than a thinly veiled effort to expedite their blatant *Saticoy Bay* /
 9 *Bourne Valley*-related forum shopping, and prevent the involuntarily removed parties from
 10 actually litigating their claims and defenses as well as prevent remand of this and the other
 11 removed matters. *See* Section II(A), *supra*.

12 The State Court actions are all different and cannot be addressed *en masse*. Many cases
 13 are positioned such that *Bourne Valley* can have absolutely no impact on them due to the Banks'
 14 claims being time barred or on the eve of trial. Further, some cases are interpleader actions
 15 where Debtor is the plaintiff and others render *Bourne Valley* inapplicable because of actual
 16 notice. In some cases the Banks are the plaintiff and seek relief from Debtor as a named party.
 17 In other cases, the Debtor is named but not as named party. These few examples alone present
 18 significant differences in the parties' positions that require independent briefing.

19 As such, any consolidation would deprive the involuntary moved parties from its due
 20 process rights to conduct discovery on relevant facts that were not required in state court.
 21 Further, such factual requirements would require a review of the applicability of *Bourne Valley*
 22 on each and every removed case. Moreover, this matter, like others, involved issues related to the

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 24 22 *See, e.g.*, *Bank of America, N.A. v. SFR Investments Pool 1, LLC, et al.*, U.S. District Court,
 District of Nevada, Case No. 2:15-cv-1768-JCM-CWH, ECF No. 88 at 17:12-19:2.

1 Bank's standing to bring the claims as well as parties making preparations for trial, which was
 2 surely not mentioned on the Bank's part as an oversight. In the interest of efficiency, the
 3 Association requests that any attempt to consolidate these matters be denied and this matter be
 4 remanded back to state court so that the dispositive state law from the Nevada Supreme Court
 5 can resolve this matter.

6 **C. THE INVOLUNTARILY REMOVED PARTIES ARE ENTITLED TO COSTS
 7 AND ANY ACTUAL EXPENSES, INCLUDING ATTORNEY FEES, INCURRED
 8 AS A RESULT OF THE REMAND PURSUANT TO 28 U.S.C. § 1447(C)**

9 "An order remanding the case may require payment of just costs and any actual expenses,
 10 including attorney fees, incurred as a result of the remand." 28 U.S.C. § 1447(c). Section 1447 is
 11 one of many provisions governing the general removal jurisdiction of the federal courts. While
 12 the bankruptcy removal statute that was used in this instance, 28 U.S.C. § 1452, contains no
 13 provision relating to payment of costs, "the Supreme Court has held that certain parts of § 1447
 14 comfortably coexist in the bankruptcy context." *In re RJZM LLC*, 06-11535(ALG), 2009 WL
 15 2929433, at *5 (Bankr. S.D.N.Y. July 28, 2009) (citing *Things Remembered, Inc. v. Petrarca*,
 16 516 U.S. 124, 129 (1995)) (internal quotes omitted). Courts have held that the costs provisions
 17 of § 1447(c) apply to orders of remand under § 1452(b). *RJZM LLC*, 06-11535(ALG), 2009 WL
 18 2929433, at *5; *see also, Coward v. AC and S, Inc.*, 91 Fed.Appx. 919 (5th Cir.2004); *In re Friedman & Shapiro, P. C.*, 185 B.R. 143 (S.D.N.Y.1995).

19 Here, the Bank's removal of this matter is blatant forum shopping and upon review of the
 20 overwhelming equitable factors above, this matter should be remanded. Upon remand, the
 21 involuntarily removed parties, including the Association, are entitled to all just costs and any
 22 actual expenses, including attorney fees, under § 1447(c) that they incurred as a result of the
 23 remand. None of these expenses would have occurred outside of removal and the involuntarily
 24 removed parties should not have to suffer the costs of remanding such matter that are motived by

1 the Bank's desire to avoid unfavorable state law.

2 **III.**

3 **CONCLUSION**

4 Having taken all of the factors into account, as well as considering judicial efficiency,
 5 this matter should be remanded to state court. This is not a close call. Many factors support this
 6 conclusion, but most important factors favoring remand are: 1) the commencement of this
 7 proceeding in bankruptcy court involves blatant forum shopping by the Bank; 2) the factual and
 8 legal issues that must be resolved prior to any resolution of the claims; 3) state law issues
 9 predominate over bankruptcy issues; 4) comity towards the Nevada Supreme Court; 6) the
 10 presence of related proceeding commenced in state court or other non-bankruptcy proceeding; 7)
 11 the state court proceeding is merely related to the bankruptcy; 9) there are no core bankruptcy
 12 matters and state court judgments can be enforced in bankruptcy court; 11) the nature of
 13 applicable state law is simple and settled; 12) retaining all these matters would create a burden
 14 on the bankruptcy court's docket; 13) the presence of the Association and the Buyer as non-
 15 debtor parties in the proceeding; and 14) the prejudice to the party involuntarily removed from
 16 state court during preparation for trial. The factors weighing against remand or that are neutral

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1 are few and are not significant enough to outweigh the factors that weigh heavily in favor of
2 remand.

3 DATED this 22nd day of March, 2017.

4
5 ALVERSON, TAYLOR,
6 MORTENSEN & SANDERS



7 KURT R. BONDS, ESQ.

8 Nevada Bar #6228

9 DAVID ROTHENBERG, ESQ.

10 Nevada Bar #13576

11 efile@alversontaylor.com

12 *Attorneys for Third-Party Defendant
(named herein as a "Cross-Defendant"),
Southern Highlands Community Association*

13
14 **CERTIFICATE OF SERVICE**

15 I hereby certify that on the 22 day of March, 2017, I served the foregoing MOTION TO
16 REMAND ACTION TO NEVADA STATE COURT via Electronic Service through the Court's
17 electronic filing system upon the following:

18
19 SEAN L. ANDERSON on behalf of Plaintiff DESERT PINE VILLAS HOMEOWNERS
ASSOCIATION
LEACH JOHNSON SONG & GRUCHOW
8945 W. RUSSELL ROAD, SUITE 330
LAS VEGAS, NV 89148

20
21 CHRISTOPHER B ANTHONY on behalf of 3rd Pty Defendant WINDIMERE AT
PROVIDENCE HOMEOWNERS ASSOCIATION
BOYACK ORME & TAYLOR
401 N. BUFFALO DRIVE
SUITE 202
LAS VEGAS, NV 89145

22
23 FREDRICK BIEDERMANN on behalf of Defendant U.S. BANK NATIONAL ASSOCIATION
GERRARD COX & LARSEN
2450 SAINT ROSE PKWY STE 200
HENDERSON, NV 89074

24 J. STEPHEN DOLEMBO on behalf of Counter-Claimant DEUTSCHE BANK NATIONAL
TRUST COMPANY
WRIGHT FINLAY & ZAK, LLP
7785 W. SAHARA AVE, SUITE 200

ALVERSON, TAYLOR, MORTENSEN & SANDERS
LAWYERS
7401 WEST CHARLESTON BOULEVARD
LAS VEGAS, NEVADA 89117-1401
(702) 384-7000

1 LAS VEGAS, NV 89117
2 J. STEPHEN DOLEMBO on behalf of Defendant BANK OF AMERICA, N.A.
3 WRIGHT FINLAY & ZAK, LLP
4 7785 W. SAHARA AVE, SUITE 200
5 LAS VEGAS, NV 89117
6 J. STEPHEN DOLEMBO on behalf of Defendant CHASE BANK USA, N.A.
7 WRIGHT FINLAY & ZAK, LLP
8 7785 W. SAHARA AVE, SUITE 200
9 LAS VEGAS, NV 89117
10 J. STEPHEN DOLEMBO on behalf of Defendant JPMORGAN CHASE BANK, N.A
11 WRIGHT FINLAY & ZAK, LLP
12 7785 W. SAHARA AVE, SUITE 200
13 LAS VEGAS, NV 89117
14 J. STEPHEN DOLEMBO on behalf of Defendant LITTON LOAN SERVICING, LP
15 WRIGHT FINLAY & ZAK, LLP
16 7785 W. SAHARA AVE, SUITE 200
17 LAS VEGAS, NV 89117
18 J. STEPHEN DOLEMBO on behalf of Defendant NATIONSTAR MORTGAGE, LLC
19 WRIGHT FINLAY & ZAK, LLP
20 7785 W. SAHARA AVE, SUITE 200
21 LAS VEGAS, NV 89117
22 J. STEPHEN DOLEMBO on behalf of Defendant OCWEN LOAN SERVICING, LLC
23 WRIGHT FINLAY & ZAK, LLP
24 7785 W. SAHARA AVE, SUITE 200
LAS VEGAS, NV 89117
J. STEPHEN DOLEMBO on behalf of Plaintiff CITIBANK, N.A.
WRIGHT FINLAY & ZAK, LLP
7785 W. SAHARA AVE, SUITE 200
LAS VEGAS, NV 89117

ALVERSON, TAYLOR, MORTENSEN & SANDERS
 LAWYERS
 7401 WEST CHARLESTON BOULEVARD
 LAS VEGAS, NEVADA 89117-1401
 (702) 384-7000

1 J. STEPHEN DOLEMBO on behalf of Plaintiff PROF-2013-M4 LEGAL TITLE TRUST
 2 WRIGHT FINLAY & ZAK, LLP
 3 7785 W. SAHARA AVE, SUITE 200
 LAS VEGAS, NV 89117

4 J. STEPHEN DOLEMBO on behalf of Plaintiff U.S. BANK NATIONAL ASSOCIATION
 5 WRIGHT FINLAY & ZAK, LLP
 6 7785 W. SAHARA AVE, SUITE 200
 LAS VEGAS, NV 89117

7 J. STEPHEN DOLEMBO on behalf of Plaintiff U.S. BANK TRUST, N.A.
 8 WRIGHT FINLAY & ZAK, LLP
 9 7785 W. SAHARA AVE, SUITE 200
 LAS VEGAS, NV 89117

10 FIRST AMERICAN TITLE INSURANCE CO.
 11 Kolesar & Leatham
 12 400 S. Rampart Boulevard
 Suite 400
 Las Vegas, NV 89145

13 BRADFORD R JERBIC on behalf of Defendant CITY OF LAS VEGAS
 14 400 E STEWART AVE 9TH FLR
 LAS VEGAS, NV 89101

15 EVAN M. JONES on behalf of Creditor BANK OF AMERICA, N.A.
 16 O'MELVENY & MYERS LLP
 17 400 SOUTH HOPE STREET, 18TH FLOOR
 LOS ANGELES, CA 90071

18 AARON D. LANCASTER on behalf of Counter-Claimant WELLS FARGO BANK, N.A.
 19 WRIGHT FINLAY & ZAK, LLP
 20 7785 W. SAHARA AVE
 SUITE 200
 LAS VEGAS, NV 89117

21 IRMA MENDEZ
 22 3433 VIA VIEJAS OESTE
 23 ALPINE, CA 91901

24 DARREN L. PATRICK on behalf of Creditor BANK OF AMERICA, N.A.
 O'MELVENY & MYERS LLP
 400 SOUTH HOPE STREET, 18TH FLOOR
 LOS ANGELES, CA 90071

1 William K. Pao on behalf of Creditor BANK OF AMERICA, N.A.
2 O'Melveny & Myers LLP
3 400 Hope Street
3 Los Angeles, CA 90071
4 AMY F SORENSEN on behalf of Creditor WELLS FARGO BANK, N.A.
5 SNELL & WILMER, L.L.P.
5 3883 HOWARD HUGHES PARKWAY, STE. 1100
6 LAS VEGAS, NV 89169
6 CHRISTOPHER A.J. SWIFT on behalf of Defendant DEUTSCHE BANK NATIONAL TRUST
7 COMPANY
7 WRIGHT, FINLAY & ZAK, LLP
8 7785 W. SAHARA AVE., SUITE 200
8 LAS VEGAS, NV 89117
9
10 CHRISTOPHER A.J. SWIFT on behalf of Defendant MORTGAGE ELECTRONIC
10 REGISTRATION SYSTEMS, INC.
11 WRIGHT, FINLAY & ZAK, LLP
11 7785 W. SAHARA AVE., SUITE 200
12 LAS VEGAS, NV 89117
13 CHRISTOPHER A.J. SWIFT on behalf of Defendant OCWEN LOAN SERVICING, LLC
13 WRIGHT, FINLAY & ZAK, LLP
14 7785 W. SAHARA AVE., SUITE 200
14 LAS VEGAS, NV 89117
15 CHRISTOPHER A.J. SWIFT on behalf of Defendant U.S. BANK NATIONAL ASSOCIATION
16 WRIGHT, FINLAY & ZAK, LLP
16 7785 W. SAHARA AVE., SUITE 200
17 LAS VEGAS, NV 89117
18 CHRISTOPHER A.J. SWIFT on behalf of Plaintiff DEUTSCHE BANK NATIONAL TRUST
18 COMPANY
19 WRIGHT, FINLAY & ZAK, LLP
19 7785 W. SAHARA AVE., SUITE 200
20 LAS VEGAS, NV 89117

Cathy Bearley
An Employee of ALVERSON, TAYLOR,
MORTENSEN & SANDERS

21
22
23 **CERTIFICATE OF SERVICE VIA CM/ECF**
24

1 I hereby certify that on this 22 day of March, 2017, I did serve, via Case
 2 Management/Electronic Case Filing, a copy of the above and foregoing **MOTION TO**
REMAND ACTION TO NEVADA STATE COURT

3 RYAN ALEXANDER on behalf of Counter-Defendant ALESSI & KOENIG, LLC
 4 ryan@ryanalexander.us, brian@ryanalexander.us;monica@ryanalexander.us

5 RYAN ALEXANDER on behalf of Debtor ALESSI & KOENIG, LLC
 6 ryan@ryanalexander.us, brian@ryanalexander.us;monica@ryanalexander.us

7 RYAN ALEXANDER on behalf of Defendant ALESSI & KOENIG, LLC
 8 ryan@ryanalexander.us, brian@ryanalexander.us;monica@ryanalexander.us

9 RYAN ALEXANDER on behalf of Intervenor-Plaintiff ALESSI & KOENIG, LLC
 10 ryan@ryanalexander.us, brian@ryanalexander.us;monica@ryanalexander.us

11 RYAN ALEXANDER on behalf of Plaintiff ALESSI & KOENIG, LLC
 12 ryan@ryanalexander.us, brian@ryanalexander.us;monica@ryanalexander.us

13 KALEB D ANDERSON on behalf of Interested Party FALCON RIDGE COMMUNITY
 14 ASSOCIATION
kanderson@lipsonneilson.com

15 NAOMI R. ARIN on behalf of Defendant ALLAN L GROMEK
 16 NAOMI@NAOMIARINESQ.COM

17 NAOMI R. ARIN on behalf of Defendant KAREN M GROMEK
 18 NAOMI@NAOMIARINESQ.COM

19 MICHAEL N. BEEDE on behalf of Counter-Defendant RJRN HOLDINGS, LLC
 20 mike@legally.com

21 MICHAEL N. BEEDE on behalf of Cross-Claimant RJRN HOLDINGS, LLC
 22 mike@legally.com

23 MICHAEL N. BEEDE on behalf of Interested Party RODNEY HOLDINGS, LLC
 24 mike@legally.com

25 MICHAEL N. BEEDE on behalf of Plaintiff CSC ACQUISITIONS & HOLDING GROUP,
 26 LLC
mike@legally.com

27 MICHAEL N. BEEDE on behalf of Plaintiff INTERNATIONAL FREEDOM INDUSTRIES
 28 LLC
mike@legally.com

29 MICHAEL N. BEEDE on behalf of Plaintiff RJRN HOLDINGS, LLC
 30 mike@legally.com

1 MICHAEL N. BEEDE on behalf of Plaintiff RICHARD SALOMON
 2 mike@legallyv.com

3 MICHAEL F BOHN on behalf of Counter-Defendant RUPERTS COURT TRUST
 4 mbohn@bohnlawfirm.com, office@bohnlawfirm.com

5 MICHAEL F BOHN on behalf of Interested Party LAW OFFICES OF MICHAEL F. BOHN
 6 mbohn@bohnlawfirm.com, office@bohnlawfirm.com

7 MICHAEL F BOHN on behalf of Interested Party SATICOY BAY LLC
 8 mbohn@bohnlawfirm.com, office@bohnlawfirm.com

9 MICHAEL F BOHN on behalf of Plaintiff RUPERTS COURT TRUST
 10 mbohn@bohnlawfirm.com, office@bohnlawfirm.com

11 KURT R. BONDS on behalf of Creditor SOUTHERN HIGHLANDS COMMUNITY
 12 ASSOCIATION
 13 efile@alversontaylor.com, kbonds@alversontaylor.com; adidio@alversontaylor.com

14 MARK J BOURASSA on behalf of Creditor MELINDA JAMES
 15 trichards@blgwins.com, hdaniels@blgwins.com

16 MARK J BOURASSA on behalf of Plaintiff WHITTINGTON HOLDINGS 1, LLC
 17 trichards@blgwins.com, hdaniels@blgwins.com

18 EDWARD D. BOYACK on behalf of 3rd Pty Defendant MOONDANCE/SUNCHASE
 19 COMMUNITY ASSOCIATION
 20 ted@edblaw.net

21 EDWARD D. BOYACK on behalf of Plaintiff MOONDANCE/SUNCHASE COMMUNITY
 22 ASSOCIATION
 23 ted@edblaw.net

24 ADAM J. BREEDEN on behalf of Creditor BOYACK ORME & TAYLOR
 25 adam@breedenandassociates.com, tina@breedenandassociates.com

26 MICHAEL R. BROOKS on behalf of Defendant FEDERAL NATIONAL MORTGAGE
 27 ASSOCIATION
 28 mbrooks@brookshubley.com

29 MICHAEL R. BROOKS on behalf of Defendant THE BANK OF NEW YORK MELLON
 30 mbrooks@brookshubley.com

31 MICHAEL W. CHEN on behalf of Creditor GUILD MORTGAGE COMPANY
 32 bknotice@mccarthyholthus.com,
 33 mchen@ecf.courtdrive.com; nvbkcourt@mccarthyholthus.com; mchen@mccarthyholthus.com

1 TARA CLARK NEWBERRY on behalf of Interested Party TARA CLARK NEWBERRY
 2 tnewberry@cnlawlv.com,
nkhoury@cnlawlv.com;myecfcnlaw@gmail.com;kseckinger@cnlawlv.com

3 TARA CLARK NEWBERRY on behalf of Plaintiff COLLEGIUM FUND LLC SERIES 30
 4 tnewberry@cnlawlv.com,
nkhoury@cnlawlv.com;myecfcnlaw@gmail.com;kseckinger@cnlawlv.com

5 DIANA S. CLINE EBRON on behalf of 3rd Pty Defendant SFR INVESTMENTS POOL 1, LLC
 6 diana@kgelegal.com,
mike@kgelegal.com;howard@kgelegal.com;jackie@kgelegal.com;staff@kgelegal.com;tomas@kgelegal.com;alex@kgelegal.com

8 DIANA S. CLINE EBRON on behalf of Counter-Claimant SFR INVESTMENTS POOL 1, LLC
 9 diana@kgelegal.com,
mike@kgelegal.com;howard@kgelegal.com;jackie@kgelegal.com;staff@kgelegal.com;tomas@kgelegal.com;alex@kgelegal.com

10 DIANA S. CLINE EBRON on behalf of Defendant SFR INVESTMENTS POOL 1, LLC
 11 diana@kgelegal.com,
mike@kgelegal.com;howard@kgelegal.com;jackie@kgelegal.com;staff@kgelegal.com;tomas@kgelegal.com;alex@kgelegal.com

12 PAUL R. CONNAGHAN on behalf of Plaintiff COLLEGIUM FUND LLC SERIES 30
 13 pcconnaghan@cnlawlv.com, ddickinson@deanerlaw.com

14 ROGER P. CROTEAU on behalf of Interested Party LAS VEGAS DEVELOPMENT GROUP, LLC
 15 croteaulaw@croteaulaw.com

16 CHELSEA A. CROWTON on behalf of Defendant DEUTSCHE BANK NATIONAL TRUST COMPANY
 17 ccrowton@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net

18 CHELSEA A. CROWTON on behalf of Defendant MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.
 19 ccrowton@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net

20 CHELSEA A. CROWTON on behalf of Defendant NATIONAL DEFAULT SERVICING, LLC
 21 ccrowton@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net

22 CHELSEA A. CROWTON on behalf of Defendant OCWEN LOAN SERVICING, LLC
 23 ccrowton@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net

24 CHELSEA A. CROWTON on behalf of Defendant SELECT PORTFOLIO SERVICING INC.
 25 ccrowton@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net

1 CHELSEA A. CROWTON on behalf of Defendant U.S. BANK NATIONAL ASSOCIATION
ccrowton@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net

2 CHELSEA A. CROWTON on behalf of Defendant U.S. BANK, NATIONAL ASSOCIATION
ccrowton@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net

3 CHELSEA A. CROWTON on behalf of Defendant WESTERN PROGRESSIVE NEVADA
 INC.
ccrowton@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net

4 CHELSEA A. CROWTON on behalf of Intervenor-Defendant SPRINGLEAF FINANCIAL
 SERVICES, INC.
ccrowton@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net

5 CHELSEA A. CROWTON on behalf of Plaintiff DEUTSCHE BANK NATIONAL TRUST
 COMPANY
ccrowton@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net

6 CHELSEA A. CROWTON on behalf of Plaintiff U.S. BANK NATIONAL ASSOCIATION
ccrowton@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net

7 AARON R. DEAN on behalf of Plaintiff KEYNOTE PROPERTIES, LLC
adean@deanlegalgroup.com, mgarth@deanlegalgroup.com

8 COLT B. DODRILL on behalf of 3rd Party Plaintiff DITECH FINANCIAL LLC
cbdodrill@wolfewyman.com, LRSatterwhite@wolfewyman.com;hntaylor@wolfewyman.com

9 COLT B. DODRILL on behalf of 3rd Party Plaintiff FEDERAL NATIONAL MORTGAGE
 ASSOCIATION
cbdodrill@wolfewyman.com, LRSatterwhite@wolfewyman.com;hntaylor@wolfewyman.com

10 COLT B. DODRILL on behalf of Counter-Claimant DITECH FINANCIAL LLC
cbdodrill@wolfewyman.com, LRSatterwhite@wolfewyman.com;hntaylor@wolfewyman.com

11 COLT B. DODRILL on behalf of Counter-Claimant FEDERAL NATIONAL MORTGAGE
 ASSOCIATION
cbdodrill@wolfewyman.com, LRSatterwhite@wolfewyman.com;hntaylor@wolfewyman.com

12 COLT B. DODRILL on behalf of Counter-Claimant GREEN TREE SERVICING LLC
cbdodrill@wolfewyman.com, LRSatterwhite@wolfewyman.com;hntaylor@wolfewyman.com

13 COLT B. DODRILL on behalf of Counter-Claimant GREEN TREE SERVICING, LLC
cbdodrill@wolfewyman.com, LRSatterwhite@wolfewyman.com;hntaylor@wolfewyman.com

14 COLT B. DODRILL on behalf of Counter-Claimant THE BANK OF NEW YORK MELLON
 TRUST COMPANY, N.A.
cbdodrill@wolfewyman.com, LRSatterwhite@wolfewyman.com;hntaylor@wolfewyman.com

1 COLT B. DODRILL on behalf of Counter-Defendant GREEN TREE SERVICING LLC
 2 cbdodrill@wolfewyman.com, LRSatterwhite@wolfewyman.com;hntaylor@wolfewyman.com

3 COLT B. DODRILL on behalf of Cross Defendant DITECH FINANCIAL LLC
 4 cbdodrill@wolfewyman.com, LRSatterwhite@wolfewyman.com;hntaylor@wolfewyman.com

5 COLT B. DODRILL on behalf of Cross Defendant GREEN TREE SERVICING LLC
 6 cbdodrill@wolfewyman.com, LRSatterwhite@wolfewyman.com;hntaylor@wolfewyman.com

7 COLT B. DODRILL on behalf of Defendant DITECH FINANCIAL LLC
 8 cbdodrill@wolfewyman.com, LRSatterwhite@wolfewyman.com;hntaylor@wolfewyman.com

9 COLT B. DODRILL on behalf of Defendant FEDERAL NATIONAL MORTGAGE
 10 ASSOCIATION
 11 cbdodrill@wolfewyman.com, LRSatterwhite@wolfewyman.com;hntaylor@wolfewyman.com

12 COLT B. DODRILL on behalf of Defendant GREEN TREE SERVICING LLC
 13 cbdodrill@wolfewyman.com, LRSatterwhite@wolfewyman.com;hntaylor@wolfewyman.com

14 COLT B. DODRILL on behalf of Defendant GREEN TREE SERVICING, LLC
 15 cbdodrill@wolfewyman.com, LRSatterwhite@wolfewyman.com;hntaylor@wolfewyman.com

16 COLT B. DODRILL on behalf of Defendant THE BANK OF NEW YORK MELLON TRUST
 17 COMPANY, N.A.
 18 cbdodrill@wolfewyman.com, LRSatterwhite@wolfewyman.com;hntaylor@wolfewyman.com

19 COLT B. DODRILL on behalf of Interested Party DITECH FINANCIAL LLC
 20 cbdodrill@wolfewyman.com, LRSatterwhite@wolfewyman.com;hntaylor@wolfewyman.com

21 COLT B. DODRILL on behalf of Intervenor DITECH FINANCIAL LLC
 22 cbdodrill@wolfewyman.com, LRSatterwhite@wolfewyman.com;hntaylor@wolfewyman.com

23 COLT B. DODRILL on behalf of Intervenor-Defendant GREEN TREE SERVICING, LLC
 24 cbdodrill@wolfewyman.com, LRSatterwhite@wolfewyman.com;hntaylor@wolfewyman.com

KERRY P. FAUGHNAN on behalf of Intervenor-Defendant CASA CHRISTINA LN TRUST
kerry.faughnan@gmail.com, filings@docprep.info

KERRY P. FAUGHNAN on behalf of Plaintiff CASA CHRISTINA LN TRUST
kerry.faughnan@gmail.com, filings@docprep.info

SCOTT D. FLEMING on behalf of Creditor WELLS FARGO BANK, N.A.
sfleming@armstrongteasdale.com,
thooven@armstrongteasdale.com;oharmon@armstrongteasdale.com;speng@armstrongteasdale.c
om;ealavi@armstrongteasdale.com

1 JOSEPH P. GARIN on behalf of Interested Party FALCON RIDGE COMMUNITY
 2 ASSOCIATION
 3 snutt@lipsonneilson.com; pjimenez@lipsonneilson.com

4 DOUGLAS D. GERRARD on behalf of Counter-Defendant NATIONSTAR MORTGAGE,
 5 LLC
 6 DGERRARD@GERRARD-COX.COM, KGonzales@Gerrard-Cox.com; KJohnson@Gerrard-
Cox.com; FBiedermann@Gerrard-Cox.com; NHenderson@Gerrard-
Cox.com; ALancaster@Gerrard-Cox.com; EMedellin@Gerrard-Cox.com

7 DOUGLAS D. GERRARD on behalf of Plaintiff NATIONSTAR MORTGAGE
 8 DGERRARD@GERRARD-COX.COM, KGonzales@Gerrard-Cox.com; KJohnson@Gerrard-
Cox.com; FBiedermann@Gerrard-Cox.com; NHenderson@Gerrard-
Cox.com; ALancaster@Gerrard-Cox.com; EMedellin@Gerrard-Cox.com

9 PETER J. GOATZ on behalf of Interested Party MICHAEL L. FORCHE
 10 peter@aaznevada.com,
pat@aaznevada.com; bkecf.aaznevada@gmail.com; candice@aaznevada.com; tony@aaznevada.c
om

11 GREEN VALLEY RANCH COMMUNITY ASSOCIATION
 12 gkerr@wrslawyers.com

13 JAMES D. GREENE on behalf of Counter-Defendant KE ALOHA HOLDINGS, LLC
 14 jgreene@greenieinfusolaw.com,
fritchie@greenieinfusolaw.com; kfarney@greenieinfusolaw.com; cwalton@greenieinfusolaw.com

15 JAMES D. GREENE on behalf of Interested Party KE ALOHA HOLDINGS, LLC
 16 jgreene@greenieinfusolaw.com,
fritchie@greenieinfusolaw.com; kfarney@greenieinfusolaw.com; cwalton@greenieinfusolaw.com

17 JAMES D. GREENE on behalf of Plaintiff KE ALOHA HOLDINGS, LLC
 18 jgreene@greenieinfusolaw.com,
fritchie@greenieinfusolaw.com; kfarney@greenieinfusolaw.com; cwalton@greenieinfusolaw.com

19 BLAKELEY E. GRIFFITH on behalf of Counter-Claimant GREEN TREE SERVICING LLC
 20 bgriffith@swlaw.com,
docket_las@swlaw.com; mfull@swlaw.com; jmath@swlaw.com; jvelarde@swlaw.com; cgianello
ni@swlaw.com

21 BLAKELEY E. GRIFFITH on behalf of Creditor WELLS FARGO BANK, N.A.
 22 bgriffith@swlaw.com,
docket_las@swlaw.com; mfull@swlaw.com; jmath@swlaw.com; jvelarde@swlaw.com; cgianello
ni@swlaw.com

23 BLAKELEY E. GRIFFITH on behalf of Defendant GREEN TREE SERVICING LLC
 24 bgriffith@swlaw.com,

1 docket_las@swlaw.com; mfull@swlaw.com; jmath@swlaw.com; jvelarde@swlaw.com; cgianello
 2 ni@swlaw.com

3 BLAKELEY E. GRIFFITH on behalf of Intervenor DITECH FINANCIAL LLC
 4 bgriffith@swlaw.com,
docket_las@swlaw.com; mfull@swlaw.com; jmath@swlaw.com; jvelarde@swlaw.com; cgianello
ni@swlaw.com

5 BLAKELEY E. GRIFFITH on behalf of Plaintiff KEYNOTE PROPERTIES, LLC
 6 bgriffith@swlaw.com,
docket_las@swlaw.com; mfull@swlaw.com; jmath@swlaw.com; jvelarde@swlaw.com; cgianello
ni@swlaw.com

7 WILLIAM S HABDAS on behalf of Creditor WELLS FARGO BANK, N.A.
 8 william.habdас@akerman.com, akermanlas@akerman.com

9 REGINA A. HABERMAS on behalf of Counter-Claimant DITECH FINANCIAL, LLC
 10 rhabermas@wrightlegal.net, nvbkfiling@wrightlegal.net; jcraig@wrightlegal.net
 REGINA A. HABERMAS on behalf of Counter-Claimant FEDERAL NATIONAL
 MORTGAGE ASSOCIATION
 11 rhabermas@wrightlegal.net, nvbkfiling@wrightlegal.net; jcraig@wrightlegal.net

12 REGINA A. HABERMAS on behalf of Counter-Claimant OCWEN LOAN SERVICING, LLC
 13 rhabermas@wrightlegal.net, nvbkfiling@wrightlegal.net; jcraig@wrightlegal.net

14 REGINA A. HABERMAS on behalf of Counter-Claimant WELLS FARGO BANK, N.A.
 15 rhabermas@wrightlegal.net, nvbkfiling@wrightlegal.net; jcraig@wrightlegal.net

16 REGINA A. HABERMAS on behalf of Counter-Defendant FEDERAL NATIONAL
 MORTGAGE ASSOCIATION
 17 rhabermas@wrightlegal.net, nvbkfiling@wrightlegal.net; jcraig@wrightlegal.net

18 REGINA A. HABERMAS on behalf of Counter-Defendant OCWEN LOAN SERVICING LLC
 19 rhabermas@wrightlegal.net, nvbkfiling@wrightlegal.net; jcraig@wrightlegal.net

20 REGINA A. HABERMAS on behalf of Defendant DITECH FINANCIAL, LLC
 21 rhabermas@wrightlegal.net, nvbkfiling@wrightlegal.net; jcraig@wrightlegal.net

22 REGINA A. HABERMAS on behalf of Defendant FEDERAL NATIONAL MORTGAGE
 ASSOCIATION
 23 rhabermas@wrightlegal.net, nvbkfiling@wrightlegal.net; jcraig@wrightlegal.net

24 REGINA A. HABERMAS on behalf of Defendant MORTGAGE ELECTRONIC
 REGISTRATION SYSTEMS, INC.
 25 rhabermas@wrightlegal.net, nvbkfiling@wrightlegal.net; jcraig@wrightlegal.net

26 REGINA A. HABERMAS on behalf of Defendant NATIONSTAR MORTGAGE LLC

1 rhabermas@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net
 2 REGINA A. HABERMAS on behalf of Defendant NATIONSTAR MORTGAGE, LLC
rhabermas@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net
 3 REGINA A. HABERMAS on behalf of Defendant OCWEN LOAN SERVICING, LLC
rhabermas@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net
 4 REGINA A. HABERMAS on behalf of Defendant ONEWEST BANK, N.A.
rhabermas@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net
 5 REGINA A. HABERMAS on behalf of Defendant SELECT PORTFOLIO SERVICING, INC.
rhabermas@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net
 6 REGINA A. HABERMAS on behalf of Intervenor-Defendant DITECH FINANCIAL, LLC
rhabermas@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net
 7 REGINA A. HABERMAS on behalf of Intervenor-Plaintiff FEDERAL NATIONAL
 8 MORTGAGE ASSOCIATION
rhabermas@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net
 9 REGINA A. HABERMAS on behalf of Other Prof. Christiana Trust
rhabermas@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net
 10 REGINA A. HABERMAS on behalf of Plaintiff ALESSI & KOENIG, LLC
rhabermas@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net
 11 REGINA A. HABERMAS on behalf of Plaintiff KEYNOTE PROPERTIES, LLC
rhabermas@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net
 12 LAUREL I. HANDLEY on behalf of Counter-Claimant CITIMORTGAGE, INC.
lhandley@aldridgeppte.com
 13 LAUREL I. HANDLEY on behalf of Creditor CITIMORTGAGE, INC.
lhandley@aldridgeppte.com
 14 LAUREL I. HANDLEY on behalf of Defendant CITIMORTGAGE, INC
lhandley@aldridgeppte.com
 15 MARK HUTCHINGS on behalf of Interested Party CHRISTIANA TRUST, A DIVISION OF
 16 WILMINGTON SAVINGS FUND SOCIETY, FSB, AS TRUSTEE OF ARLP TRUST
mhutchings@houser-law.com
 17 JASON A. IMES on behalf of Trustee SHELLEY D KROHN
bkfilings@s-mlaw.com
 18 MICHAEL V. INFUSO on behalf of Counter-Defendant KE ALOHA HOLDINGS, LLC

1 minfuso@greeneinfusolaw.com
 2 MICHAEL V. INFUSO on behalf of Plaintiff G&P INVESTMENT ENTERPRISES LLC
minfuso@greeneinfusolaw.com
 3 MICHAEL V. INFUSO on behalf of Plaintiff KE ALOHA HOLDINGS, LLC
minfuso@greeneinfusolaw.com
 4
 5 PATERNO C JURANI on behalf of Counter-Claimant WELLS FARGO BANK, N.A.
pjuarani@wrightlegal.net
 6 PATERNO C JURANI on behalf of Defendant BANK OF AMERICA, N.A.
pjuarani@wrightlegal.net
 7
 8 PATERNO C JURANI on behalf of Defendant FIRST FRANKLIN FINANCIAL CORP.
pjuarani@wrightlegal.net
 9
 10 PATERNO C JURANI on behalf of Plaintiff CHRISTIANA TRUST
pjuarani@wrightlegal.net
 11 PATRICK W. KANG on behalf of Plaintiff CHRIS D PARK
pkang@alkalaw.com
 12 NATHAN G. KANUTE on behalf of Creditor WELLS FARGO BANK, N.A.
nkanute@swlaw.com,
mfull@swlaw.com;jmath@swlaw.com;docket_las@swlaw.com;jvelarde@swlaw.com;ljtaylor@swlaw.com
 13
 14 MICHAEAL S. KELLEY on behalf of Counter-Claimant U.S. BANK
mkelley@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net
 15
 16 MICHAEAL S. KELLEY on behalf of Counter-Defendant WELLS FARGO BANK, N.A.
mkelley@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net
 17
 18 MICHAEAL S. KELLEY on behalf of Plaintiff WELLS FARGO BANK, N.A.
mkelley@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net
 19
 20 GREGORY P KERR on behalf of Interested Party DOUBLE DIAMOND RANCH MASTER
 ASSOCIATION
gkerr@wrslawyers.com, nmiller@wrslawyers.com
 21
 22 GREGORY P KERR on behalf of Interested Party GREEN VALLEY RANCH COMMUNITY
 ASSOCIATION
gkerr@wrslawyers.com, nmiller@wrslawyers.com
 23
 24 HOWARD C. KIM on behalf of 3rd Party Plaintiff SFR INVESTMENTS POOL 1, LLC
howard@kgelegal.com,

1 jackie@kgelegal.com;mike@kgelegal.com;tomas@kgelegal.com;staff@kgelegal.com;diana@kg
 2 legal.com;alex@kgelegal.com

3 HOWARD C. KIM on behalf of 3rd Pty Defendant SFR INVESTMENTS POOL 1, LLC
 4 howard@kgelegal.com,
jackie@kgelegal.com;mike@kgelegal.com;tomas@kgelegal.com;staff@kgelegal.com;diana@kg
legal.com;alex@kgelegal.com

5 HOWARD C. KIM on behalf of Attorney HOWARD C. KIM
 6 howard@kgelegal.com,
jackie@kgelegal.com;mike@kgelegal.com;tomas@kgelegal.com;staff@kgelegal.com;diana@kg
legal.com;alex@kgelegal.com

7 HOWARD C. KIM on behalf of Counter-Claimant SFR INVESTMENTS POOL 1, LLC
 8 howard@kgelegal.com,
jackie@kgelegal.com;mike@kgelegal.com;tomas@kgelegal.com;staff@kgelegal.com;diana@kg
legal.com;alex@kgelegal.com

10 HOWARD C. KIM on behalf of Counter-Defendant SFR INVESTMENTS POOL 1, LLC
 11 howard@kgelegal.com,
jackie@kgelegal.com;mike@kgelegal.com;tomas@kgelegal.com;staff@kgelegal.com;diana@kg
legal.com;alex@kgelegal.com

13 HOWARD C. KIM on behalf of Creditor SFR INVESTMENTS POOL 1, LLC
 14 howard@kgelegal.com,
jackie@kgelegal.com;mike@kgelegal.com;tomas@kgelegal.com;staff@kgelegal.com;diana@kg
legal.com;alex@kgelegal.com

15 HOWARD C. KIM on behalf of Cross Defendant SFR INVESTMENTS POOL 1, LLC
 16 howard@kgelegal.com,
jackie@kgelegal.com;mike@kgelegal.com;tomas@kgelegal.com;staff@kgelegal.com;diana@kg
legal.com;alex@kgelegal.com

17 HOWARD C. KIM on behalf of Defendant SFR INVESTMENTS POOL 1, LLC
 18 howard@kgelegal.com,
jackie@kgelegal.com;mike@kgelegal.com;tomas@kgelegal.com;staff@kgelegal.com;diana@kg
legal.com;alex@kgelegal.com

20 HOWARD C. KIM on behalf of Interested Party SFR INVESTMENTS POOL 1, LLC
 21 howard@kgelegal.com,
jackie@kgelegal.com;mike@kgelegal.com;tomas@kgelegal.com;staff@kgelegal.com;diana@kg
legal.com;alex@kgelegal.com

22 DALE K. KLEVEN on behalf of Creditor RONALD HILLMAN
 23 dale@hrlnv.com, DALEKLEVEN@YAHOO.COM

24 SHELLEY D KROHN

1 shelley@trusteekrohn.com,
 2 NV27@ecfcbis.com; becca@trusteekrohn.com; jan@trusteekrohn.com

3 HUONG X. LAM on behalf of Plaintiff ALESSI & KOENIG, LLC
 4 hlam@alessikoenig.com, sara@alessikoenig.com; rock@alessikoenig.com

5 BART K. LARSEN on behalf of Creditor LEVI J JONES
 6 blarsen@klnevada.com,
 7 jierien@klnevada.com; bankruptcy@klnevada.com; mbarnes@klnevada.com; blarsen@ecf.inforuptcy.com

8 ROBERT S. LARSEN on behalf of Interested Party CRAIGMONT VILLAS HOMEOWNERS
 9 ASSOCIATION
 10 RLARSEN@GORDONREES.COM, gangulo@gordonrees.com

11 ROBERT S. LARSEN on behalf of Interested Party HIGH NOON AT ARLINGTON RANCH
 12 HOMEOWNERS ASSOCIATION
 13 RLARSEN@GORDONREES.COM, gangulo@gordonrees.com

14 ROBERT S. LARSEN on behalf of Interested Party LAMPLIGHT ESTATES AT
 15 CENTENNIAL SPRINGS HOMEOWNERS ASSOCIATION
 16 RLARSEN@GORDONREES.COM, gangulo@gordonrees.com

17 ROBERT S. LARSEN on behalf of Interested Party MISSION HILLS HOMEOWNERS
 18 ASSOCIATION
 19 RLARSEN@GORDONREES.COM, gangulo@gordonrees.com

20 ROBERT S. LARSEN on behalf of Interested Party SAPPHIRE HOMEOWNERS
 21 ASSOCIATION
 22 RLARSEN@GORDONREES.COM, gangulo@gordonrees.com

23 ROBERT S. LARSEN on behalf of Interested Party VILLAGE GREEN HOMEOWNERS
 24 ASSOC.
 25 RLARSEN@GORDONREES.COM, gangulo@gordonrees.com

26 DAVID S. LEE on behalf of Creditor LEE FAMILY PROPERTIES, LLC A/K/A LEE FAMILY
 27 PROPERTIES, LLC SERIES XVI
 28 dlee@lee-lawfirm.com, crenwick@lee-lawfirm.com; dmeeter@lee-lawfirm.com

29 DAVID S. LEE on behalf of Creditor LEE FAMILY PROPERTIES, LLC SERIES XVII
 30 dlee@lee-lawfirm.com, crenwick@lee-lawfirm.com; dmeeter@lee-lawfirm.com

31 DAVID S. LEE on behalf of Creditor TOW PROPERTIES, LLC
 32 dlee@lee-lawfirm.com, crenwick@lee-lawfirm.com; dmeeter@lee-lawfirm.com

1 NATALIE LEHMAN on behalf of Defendant DEUTSCHE BANK NATIONAL TRUST
 2 COMPANY
nlehman@wrightlegal.net, jcraig@wrightlegal.net;nvbkfiling@wrightlegal.net;
 3 NATALIE LEHMAN on behalf of Plaintiff HOMEWARD RESIDENTIAL, INC.
nlehman@wrightlegal.net, jcraig@wrightlegal.net;nvbkfiling@wrightlegal.net;
 4 STEVEN LOIZZI, JR on behalf of Counter-Defendant ALESSI & KOENIG, LLC
steve@nrs116.com, jona@nrs116.com;max@nrs116.com
 5 STEVEN LOIZZI, JR on behalf of Counter-Defendant MAJESTIC HILLS COMMUNITY
 6 ASSOCIATION
steve@nrs116.com, jona@nrs116.com;max@nrs116.com
 7 STEVEN LOIZZI, JR on behalf of Counter-Defendant PARADISE FALLS HOMEOWNERS
 8 ASSOCIATION
steve@nrs116.com, jona@nrs116.com;max@nrs116.com
 9 STEVEN LOIZZI, JR on behalf of Counter-Defendant PARK 1 AT SUMMERLINGATE
steve@nrs116.com, jona@nrs116.com;max@nrs116.com
 10 STEVEN LOIZZI, JR on behalf of Defendant ALESSI & KOENIG, LLC
steve@nrs116.com, jona@nrs116.com;max@nrs116.com
 11 STEVEN LOIZZI, JR on behalf of Intervenor-Defendant CASA REAL I HOMEOWNERS
 12 ASSOCIATION
steve@nrs116.com, jona@nrs116.com;max@nrs116.com
 13 STEVEN LOIZZI, JR on behalf of Intervenor-Plaintiff ALESSI & KOENIG, LLC
steve@nrs116.com, jona@nrs116.com;max@nrs116.com
 14 STEVEN LOIZZI, JR on behalf of Plaintiff 4300 N LAMONT 268 TRUST
steve@nrs116.com, jona@nrs116.com;max@nrs116.com
 15 STEVEN LOIZZI, JR on behalf of Plaintiff ALESSI & KOENIG, LLC
steve@nrs116.com, jona@nrs116.com;max@nrs116.com
 16 STEVEN LOIZZI, JR on behalf of Plaintiff DESERT PINE VILLAS HOMEOWNERS
 17 ASSOCIATION
steve@nrs116.com, jona@nrs116.com;max@nrs116.com
 18 AARON R. MAURICE on behalf of Cross Defendant FIRST AMERICAN TRUSTEE
 19 SERVING SOLUTIONS, LLC
amaurice@klnevada.com,
 20 sowens@klnevada.com;bwood@klnevada.com;bankruptcy@klnevada.com
 21 AARON R. MAURICE on behalf of Defendant FIRST AMERICAN TRUSTEE SERVICING

1 SOLUTIONS, LLC
 2 amaurice@klnevada.com,
 2 sowens@klnevada.com; bwood@klnevada.com; bankruptcy@klnevada.com

3 MATTHEW J MCALONIS on behalf of Creditor CAPAROLA AT SOUTHERN HIGHLANDS
 4 HOMEOWNERS ASSOCIATION
 4 MMcAlonis@the-clg.com, cmrowicki@the-clg.com; SBishai@the-clg.com; jaylor@the-clg.com

5 JEANETTE E. MCPHERSON on behalf of Trustee SHELLEY D KROHN
 6 bkfilings@s-mlaw.com

7 CHRISTINA V MILLER on behalf of Counter-Claimant DEUTSCHE BANK NATIONAL
 8 TRUST COMPANY
 8 cmiller@wrightlegal.net

9 CHRISTINA V MILLER on behalf of Counter-Claimant U.S. BANK
 9 cmiller@wrightlegal.net

10 CHRISTINA V MILLER on behalf of Counter-Claimant U.S. BANK, N.A.
 10 cmiller@wrightlegal.net

11 CHRISTINA V MILLER on behalf of Counter-Claimant WELLS FARGO BANK, N.A.
 12 cmiller@wrightlegal.net

13 CHRISTINA V MILLER on behalf of Defendant BANK OF AMERICA, N.A.
 13 cmiller@wrightlegal.net

14 CHRISTINA V MILLER on behalf of Defendant CHASE BANK USA, N.A.
 15 cmiller@wrightlegal.net

16 CHRISTINA V MILLER on behalf of Defendant CITIMORTGAGE, INC.
 16 cmiller@wrightlegal.net

17 CHRISTINA V MILLER on behalf of Defendant DEUTSCHE BANK NATIONAL TRUST
 18 COMPANY
 18 cmiller@wrightlegal.net

19 CHRISTINA V MILLER on behalf of Defendant DLJ MORTGAGE CAPITAL, INC.
 20 cmiller@wrightlegal.net

21 CHRISTINA V MILLER on behalf of Defendant FEDERAL NATIONAL MORTGAGE
 22 ASSOCIATION
 22 cmiller@wrightlegal.net

23 CHRISTINA V MILLER on behalf of Defendant HSBC BANK USA NATIONAL
 24 ASSOCIATION
 24 cmiller@wrightlegal.net

ALVERSON, TAYLOR, MORTENSEN & SANDERS
LAWYERS
7401 WEST CHARLESTON BOULEVARD
LAS VEGAS, NEVADA 89117-1401
(702) 384-7000

1 CHRISTINA V MILLER on behalf of Defendant JPMORGAN CHASE BANK, N.A
2 cmiller@wrightlegal.net
3 CHRISTINA V MILLER on behalf of Defendant LITTON LOAN SERVICING, LP
4 cmiller@wrightlegal.net
5 CHRISTINA V MILLER on behalf of Defendant MORTGAGE ELECTRONIC
6 REGISTRATION SYSTEMS, INC.
7 cmiller@wrightlegal.net
8 CHRISTINA V MILLER on behalf of Defendant NATIONAL DEFAULT SERVICING, LLC
9 cmiller@wrightlegal.net
10 CHRISTINA V MILLER on behalf of Defendant NATIONSTAR MORTGAGE LLC
11 cmiller@wrightlegal.net
12 CHRISTINA V MILLER on behalf of Defendant NATIONSTAR MORTGAGE, LLC
13 cmiller@wrightlegal.net
14 CHRISTINA V MILLER on behalf of Defendant OCWEN LOAN SERVICING, LLC
15 cmiller@wrightlegal.net
16 CHRISTINA V MILLER on behalf of Defendant ONEWEST BANK, N.A.
17 cmiller@wrightlegal.net
18 CHRISTINA V MILLER on behalf of Defendant SELECT PORTFOLIO SERVICING INC.
19 cmiller@wrightlegal.net
20 CHRISTINA V MILLER on behalf of Defendant U.S. BANK NATIONAL ASSOCIATION
21 cmiller@wrightlegal.net
22 CHRISTINA V MILLER on behalf of Defendant U.S. BANK, NATIONAL ASSOCIATION
23 cmiller@wrightlegal.net
24 CHRISTINA V MILLER on behalf of Defendant USROF III LEGAL TITLE TRUST 2015-1
25 cmiller@wrightlegal.net
26 CHRISTINA V MILLER on behalf of Defendant WELLS FARGO BANK, N.A
27 cmiller@wrightlegal.net
28 CHRISTINA V MILLER on behalf of Defendant WESTERN PROGRESSIVE NEVADA INC.
29 cmiller@wrightlegal.net
30 CHRISTINA V MILLER on behalf of Intervenor-Defendant DITECH FINANCIAL, LLC
31 cmiller@wrightlegal.net

ALVERSON, TAYLOR, MORTENSEN & SANDERS
LAWYERS
7401 WEST CHARLESTON BOULEVARD
LAS VEGAS, NEVADA 89117-1401
(702) 384-7000

1 CHRISTINA V MILLER on behalf of Intervenor-Defendant SPRINGLEAF FINANCIAL
2 SERVICES, INC.
2 cmiller@wrightlegal.net
3 CHRISTINA V MILLER on behalf of Intervenor-Plaintiff FEDERAL NATIONAL
4 MORTGAGE ASSOCIATION
4 cmiller@wrightlegal.net
5 CHRISTINA V MILLER on behalf of Plaintiff CHRISTIANA TRUST
5 cmiller@wrightlegal.net
6 CHRISTINA V MILLER on behalf of Plaintiff CITIBANK, N.A.
7 cmiller@wrightlegal.net
8 CHRISTINA V MILLER on behalf of Plaintiff DEUTSCHE BANK NATIONAL TRUST
9 COMPANY
9 cmiller@wrightlegal.net
10 CHRISTINA V MILLER on behalf of Plaintiff HOMEWARD RESIDENTIAL, INC.
10 cmiller@wrightlegal.net
11 CHRISTINA V MILLER on behalf of Plaintiff PROF-2013-M4 LEGAL TITLE TRUST
12 cmiller@wrightlegal.net
13 CHRISTINA V MILLER on behalf of Plaintiff SELECT PORTFOLIO SERVICING INC.
14 cmiller@wrightlegal.net
15 CHRISTINA V MILLER on behalf of Plaintiff SELECT PORTFOLIO SERVICING, LLC
15 cmiller@wrightlegal.net
16 CHRISTINA V MILLER on behalf of Plaintiff THE BANK OF NEW YORK MELLON
16 cmiller@wrightlegal.net
17 CHRISTINA V MILLER on behalf of Plaintiff U.S. BANK NATIONAL ASSOCIATION
18 cmiller@wrightlegal.net
19 CHRISTINA V MILLER on behalf of Plaintiff U.S. BANK TRUST, N.A.
19 cmiller@wrightlegal.net
20 CHRISTINA V MILLER on behalf of Plaintiff WELLS FARGO BANK, N.A.
21 cmiller@wrightlegal.net
22 DANA JONATHON NITZ on behalf of 3rd Pty Defendant DEUTSCHE BANK NATIONAL
23 TRUST COMPANY
23 dnitz@wrightlegal.net, nvbkfiling@wrightlegal.net; jcraig@wrightlegal.net
24 DANA JONATHON NITZ on behalf of Counter-Claimant CITIMORTGAGE, INC.

1 dnitz@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net

2 DANA JONATHON NITZ on behalf of Counter-Claimant DEUTSCHE BANK NATIONAL
TRUST COMPANY
dnitz@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net

3 DANA JONATHON NITZ on behalf of Counter-Claimant FEDERAL NATIONAL
MORTGAGE ASSOCIATION
dnitz@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net

4 DANA JONATHON NITZ on behalf of Counter-Claimant LITTON LOAN SERVICING LP
dnitz@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net

5 DANA JONATHON NITZ on behalf of Counter-Claimant OCWEN LOAN SERVICING, LLC
dnitz@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net

6 DANA JONATHON NITZ on behalf of Counter-Claimant U.S. BANK
dnitz@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net

7 DANA JONATHON NITZ on behalf of Counter-Claimant U.S. BANK NATIONAL
ASSOCIATION
dnitz@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net

8 DANA JONATHON NITZ on behalf of Counter-Claimant WELLS FARGO BANK, N.A.
dnitz@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net

9 DANA JONATHON NITZ on behalf of Counter-Defendant BANK OF NEW YORK MELLON
dnitz@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net

10 DANA JONATHON NITZ on behalf of Counter-Defendant CHRISTIANA TRUST
dnitz@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net

11 DANA JONATHON NITZ on behalf of Counter-Defendant CITIBANK, N.A.
dnitz@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net

12 DANA JONATHON NITZ on behalf of Counter-Defendant DEUTSCHE BANK NATIONAL
TRUST COMPANY
dnitz@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net

13 DANA JONATHON NITZ on behalf of Counter-Defendant HSBC BANK USA NATIONAL
ASSOCIATION
dnitz@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net

14 DANA JONATHON NITZ on behalf of Counter-Defendant OCWEN LOAN SERVICING LLC
dnitz@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net

15 DANA JONATHON NITZ on behalf of Counter-Defendant U.S. BANK NATIONAL
ASSOCIATION
dnitz@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net

1 dnitz@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net
 2 DANA JONATHON NITZ on behalf of Counter-Defendant U.S. BANK, N.A.
dnitz@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net
 3 DANA JONATHON NITZ on behalf of Counter-Defendant U.S. BANK, NATIONAL
 ASSOCIATION
dnitz@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net
 4 DANA JONATHON NITZ on behalf of Counter-Defendant WELLS FARGO BANK, N.A.
dnitz@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net
 5 DANA JONATHON NITZ on behalf of Creditor HSBC BANK USA, N.A.
dnitz@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net
 6 DANA JONATHON NITZ on behalf of Creditor SELECT PORTFOLIO SERVICING LLC
dnitz@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net
 7 DANA JONATHON NITZ on behalf of Cross-Claimant LITTON LOAN SERVICING LP
dnitz@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net
 8 DANA JONATHON NITZ on behalf of Defendant BANK OF AMERICA, N.A.
dnitz@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net
 9 DANA JONATHON NITZ on behalf of Defendant CITIBANK, N.A.
dnitz@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net
 10 DANA JONATHON NITZ on behalf of Defendant CITIMORTGAGE, INC.
dnitz@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net
 11 DANA JONATHON NITZ on behalf of Defendant DEUTSCHE BANK NATIONAL TRUST
 COMPANY
dnitz@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net
 12 DANA JONATHON NITZ on behalf of Defendant DLJ MORTGAGE CAPITAL, INC.
dnitz@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net
 13 DANA JONATHON NITZ on behalf of Defendant FEDERAL NATIONAL MORTGAGE
 ASSOCIATION
dnitz@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net
 14 DANA JONATHON NITZ on behalf of Defendant FIRST FRANKLIN FINANCIAL CORP.
dnitz@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net
 15 DANA JONATHON NITZ on behalf of Defendant LITTON LOAN SERVICING, LP
dnitz@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net
 16 DANA JONATHON NITZ on behalf of Defendant MERRILL LYNCH, PIERCE, FENSTERWALD,
 BOBBS-MERRILL, LLC
dnitz@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net
 17 DANA JONATHON NITZ on behalf of Defendant PNC BANK, N.A.
dnitz@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net
 18 DANA JONATHON NITZ on behalf of Defendant U.S. BANK, N.A.
dnitz@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net
 19 DANA JONATHON NITZ on behalf of Plaintiff CREDIT SUISSE AG
dnitz@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net
 20 DANA JONATHON NITZ on behalf of Plaintiff JEFFREY L. BROWN
dnitz@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net
 21 DANA JONATHON NITZ on behalf of Plaintiff JEFFREY L. BROWN
dnitz@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net
 22 DANA JONATHON NITZ on behalf of Plaintiff JEFFREY L. BROWN
dnitz@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net
 23 DANA JONATHON NITZ on behalf of Plaintiff JEFFREY L. BROWN
dnitz@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net
 24 DANA JONATHON NITZ on behalf of Plaintiff JEFFREY L. BROWN
dnitz@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net

1 DANA JONATHON NITZ on behalf of Defendant MORTGAGE ELECTRONIC
 2 REGISTRATION SYSTEMS, INC.
 2 dnitz@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net

3 DANA JONATHON NITZ on behalf of Defendant NATIONAL DEFAULT SERVICING, LLC
 3 dnitz@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net

4 DANA JONATHON NITZ on behalf of Defendant NATIONSTAR MORTGAGE LLC
 5 dnitz@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net

6 DANA JONATHON NITZ on behalf of Defendant NATIONSTAR MORTGAGE, LLC
 6 dnitz@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net

7 DANA JONATHON NITZ on behalf of Defendant NEW CENTURY MORTGAGE
 8 CORPORATION
 8 dnitz@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net

9 DANA JONATHON NITZ on behalf of Defendant OCWEN LOAN SERVICING, LLC
 10 dnitz@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net

11 DANA JONATHON NITZ on behalf of Defendant ONEWEST BANK, N.A.
 11 dnitz@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net

12 DANA JONATHON NITZ on behalf of Defendant SELECT PORTFOLIO SERVICING INC.
 13 dnitz@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net

14 DANA JONATHON NITZ on behalf of Defendant U.S. BANK NATIONAL ASSOCIATION
 14 dnitz@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net

15 DANA JONATHON NITZ on behalf of Defendant U.S. BANK, NATIONAL ASSOCIATION
 16 dnitz@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net

17 DANA JONATHON NITZ on behalf of Defendant WELLS FARGO BANK, N.A
 17 dnitz@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net

18 DANA JONATHON NITZ on behalf of Defendant WESTERN PROGRESSIVE NEVADA
 19 INC.
 19 dnitz@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net

20 DANA JONATHON NITZ on behalf of Interested Party BAYVIEW LOAN SERVICING, LLC
 21 dnitz@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net

22 DANA JONATHON NITZ on behalf of Interested Party BSI FINANCIAL SERVICES, INC.
 22 dnitz@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net

23 DANA JONATHON NITZ on behalf of Interested Party CALIBER HOME LOANS, INC.
 24 dnitz@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net

1 DANA JONATHON NITZ on behalf of Interested Party CARRINGTON MORTGAGE
 2 COMPANY
dnitz@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net

3 DANA JONATHON NITZ on behalf of Interested Party CITIBANK
 4 dnitz@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net

5 DANA JONATHON NITZ on behalf of Interested Party DITECH FINANCIAL, LLC
dnitz@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net

6 DANA JONATHON NITZ on behalf of Interested Party FAY SERVICING, LLC
dnitz@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net

7 DANA JONATHON NITZ on behalf of Interested Party FEDERAL NATIONAL MORTGAGE
 8 ASSOCIATION
dnitz@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net

9 DANA JONATHON NITZ on behalf of Interested Party NATIONSTAR MORTGAGE, LLC
dnitz@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net

10 DANA JONATHON NITZ on behalf of Interested Party OCWEN LOAN SERVICING, LLC
dnitz@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net

11 DANA JONATHON NITZ on behalf of Interested Party RESIDENTIAL CREDIT
 12 SOLUTIONS, INC.
dnitz@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net

13 DANA JONATHON NITZ on behalf of Interested Party SELECT PORTFOLIO SERVICING,
 14 INC.
dnitz@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net

15 DANA JONATHON NITZ on behalf of Interested Party SETERUS, INC.
dnitz@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net

16 DANA JONATHON NITZ on behalf of Interested Party SHELLPOINT MORTGAGE
 17 SERVICING
dnitz@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net

18 DANA JONATHON NITZ on behalf of Interested Party SPECIALIZED LOAN SERVICING,
 19 LLC
dnitz@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net

20 DANA JONATHON NITZ on behalf of Interested Party WELLS FARGO BANK
dnitz@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net

21 DANA JONATHON NITZ on behalf of Intervenor-Defendant DITECH FINANCIAL, LLC
dnitz@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net

22

23

24

1 dnitz@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net
 2 DANA JONATHON NITZ on behalf of Intervenor-Defendant SPRINGLEAF FINANCIAL
 SERVICES, INC.
 3 dnitz@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net
 4 DANA JONATHON NITZ on behalf of Intervenor-Plaintiff FEDERAL NATIONAL
 MORTGAGE ASSOCIATION
 5 dnitz@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net
 6 DANA JONATHON NITZ on behalf of Plaintiff BANK OF NEW YORK MELLON
dnitz@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net
 7 DANA JONATHON NITZ on behalf of Plaintiff CHRISTIANA TRUST
dnitz@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net
 8 DANA JONATHON NITZ on behalf of Plaintiff CITIBANK, N.A.
dnitz@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net
 9 DANA JONATHON NITZ on behalf of Plaintiff DEUTSCHE BANK NATIONAL TRUST
 COMPANY
dnitz@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net
 10 DANA JONATHON NITZ on behalf of Plaintiff DEUTSCHE BANK TRUST COMPANY
dnitz@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net
 11 DANA JONATHON NITZ on behalf of Plaintiff HOMEWARD RESIDENTIAL, INC.
dnitz@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net
 12 DANA JONATHON NITZ on behalf of Plaintiff HSBC BANK USA NATIONAL
 ASSOCIATION
dnitz@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net
 13 DANA JONATHON NITZ on behalf of Plaintiff LN MANAGEMENT LLC SERIES 5576
 ROCHELLE 8C
dnitz@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net
 14 DANA JONATHON NITZ on behalf of Plaintiff NATIONSTAR MORTGAGE, LLC
dnitz@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net
 15 DANA JONATHON NITZ on behalf of Plaintiff THE BANK OF NEW YORK MELLON
dnitz@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net
 16 DANA JONATHON NITZ on behalf of Plaintiff U.S. BANK NATIONAL ASSOCIATION
dnitz@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net
 17 DANA JONATHON NITZ on behalf of Plaintiff U.S. BANK, NATIONAL ASSOCIATION

1 dnitz@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net
 2 DANA JONATHON NITZ on behalf of Plaintiff WELLS FARGO BANK, N.A.
dnitz@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net
 3 ROBERT B. NOGGLE on behalf of Plaintiff LINDA FONG
office@nogglelaw.com
 4
 5 JAMES W PENGILLY on behalf of Counter-Defendant THE HEATHERS HOMEOWNERS
 ASSOCIATION
jpengilly@pengillylawfirm.com,
cschnider@pengillylawfirm.com;cfuss@pengillylawfirm.com;oschulze@pengillylawfirm.com
 6
 7 JAMES W PENGILLY on behalf of Interested Party JAMES PENGILLY
jpengilly@pengillylawfirm.com,
cschnider@pengillylawfirm.com;cfuss@pengillylawfirm.com;oschulze@pengillylawfirm.com
 8
 9 TAMARA BEATTY PETERSON on behalf of Creditor SOUTHERN HIGHLANDS
 COMMUNITY ASSOCIATION
tpeterson@petersonbaker.com, eparcells@petersonbaker.com
 10
 11 ERIC S. POWERS on behalf of Counter-Claimant BANK OF AMERICA, N.A.
epowers@wrightlegal.net
 12
 13 ERIC S. POWERS on behalf of Counter-Claimant U.S. BANK, N.A.
epowers@wrightlegal.net
 14
 15 ERIC S. POWERS on behalf of Defendant CITIMORTGAGE, INC.
epowers@wrightlegal.net
 16
 17 ERIC S. POWERS on behalf of Defendant NATIONSTAR MORTGAGE, LLC
epowers@wrightlegal.net
 18
 19 ERIC S. POWERS on behalf of Plaintiff CHRISTIANA TRUST
epowers@wrightlegal.net
 20
 21 TRENT L. RICHARDS on behalf of Creditor MELINDA JAMES
trichards@bourassalawgroup.com
 22
 23 TRENT L. RICHARDS on behalf of Plaintiff WHITTINGTON HOLDINGS 1, LLC
trichards@bourassalawgroup.com
 24 ROBERT RIETHER on behalf of Defendant DLJ MORTGAGE CAPITAL, INC.
rriether@wrightlegal.net

ALVERSON, TAYLOR, MORTENSEN & SANDERS
 LAWYERS
 7401 WEST CHARLESTON BOULEVARD
 LAS VEGAS, NEVADA 89117-1401
 (702) 384-7000

1 ROBERT RIETHER on behalf of Defendant WELLS FARGO BANK, N.A.
 2 rriether@wrightlegal.net

3 ROBERT RIETHER on behalf of Plaintiff U.S. BANK NATIONAL ASSOCIATION
 4 riether@wrightlegal.net

5 ROBERT RIETHER on behalf of Plaintiff WELLS FARGO BANK, N.A.
 6 RRIETHER@WRIGHTLEGAL.NET

7 ROBERT RIETHER on behalf of Plaintiff WELLS FARGO BANK, N.A.
 8 rriether@wrightlegal.net

9 JOHN M. SAMBERG on behalf of Interested Party DOUBLE DIAMOND RANCH MASTER
 10 ASSOCIATION
 11 jsamberg@wrslawyers.com, efilingjms@wrslawyers.com

12 KRISTIN A. SCHULER-HINTZ on behalf of Defendant QUALITY LOAN SERVICE
 13 CORPORATION
 14 bknotice@mccarthyholthus.com

15 WILLIAM D. SCHULLER on behalf of Creditor LEVI J JONES
 16 wschuller@klnevada.com,
ckishi@klnevada.com;bankruptcy@klnevada.com;ckishi@ecf.courtdrive.com

17 WILLIAM D. SCHULLER on behalf of Defendant FIRST AMERICAN TITLE INSURANCE
 18 CO.
 19 wschuller@klnevada.com,
ckishi@klnevada.com;bankruptcy@klnevada.com;ckishi@ecf.courtdrive.com

20 JAMES PATRICK SHEA on behalf of Creditor WELLS FARGO BANK, N.A.
 21 jshea@armstrongteasdale.com

22 EDGAR C. SMITH on behalf of 3rd Party Plaintiff BANK OF AMERICA, N.A.
 23 esmith@wrightlegal.net, nvbkgfiling@wrightlegal.net;jcraig@wrightlegal.net

24 EDGAR C. SMITH on behalf of 3rd Party Plaintiff U.S. BANK, N.A.
 25 esmith@wrightlegal.net, nvbkgfiling@wrightlegal.net;jcraig@wrightlegal.net

EDGAR C. SMITH on behalf of 3rd Party Plaintiff WELLS FARGO BANK, N.A.
esmith@wrightlegal.net, nvbkgfiling@wrightlegal.net;jcraig@wrightlegal.net

EDGAR C. SMITH on behalf of Counter-Claimant CHASE BANK USA, N.A.
esmith@wrightlegal.net, nvbkgfiling@wrightlegal.net;jcraig@wrightlegal.net

EDGAR C. SMITH on behalf of Counter-Claimant CITIMORTGAGE, INC.
esmith@wrightlegal.net, nvbkgfiling@wrightlegal.net;jcraig@wrightlegal.net

1 EDGAR C. SMITH on behalf of Counter-Claimant DEUTSCHE BANK NATIONAL TRUST
 2 COMPANY
esmith@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net

3 EDGAR C. SMITH on behalf of Counter-Claimant HSBC BANK USA NATIONAL
 4 ASSOCIATION
esmith@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net

5 EDGAR C. SMITH on behalf of Counter-Claimant JPMORGAN CHASE BANK N.A.
 6 esmith@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net

7 EDGAR C. SMITH on behalf of Counter-Claimant NATIONSTAR MORTGAGE, LLC
 8 esmith@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net

9 EDGAR C. SMITH on behalf of Counter-Claimant U.S. BANK NATIONAL ASSOCIATION
esmith@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net

10 EDGAR C. SMITH on behalf of Counter-Claimant U.S. BANK, N.A.
esmith@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net

11 EDGAR C. SMITH on behalf of Counter-Claimant USROF III LEGAL TITLE TRUST 2015-1
esmith@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net

12 EDGAR C. SMITH on behalf of Counter-Claimant WELLS FARGO BANK, N.A.
esmith@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net

13 EDGAR C. SMITH on behalf of Counter-Claimant WELLS FARGO BANK, NATIONAL
 14 ASSOCIATION
esmith@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net

15 EDGAR C. SMITH on behalf of Counter-Claimant WELLS FARGO, NATIONAL
 16 ASSOCIATION
esmith@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net

17 EDGAR C. SMITH on behalf of Counter-Defendant CHRISTIANA TRUST
esmith@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net

18 EDGAR C. SMITH on behalf of Counter-Defendant HSBC BANK USA, NATIONAL
 19 ASSOCIATION
esmith@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net

20 EDGAR C. SMITH on behalf of Counter-Defendant MORTGAGE ELECTRONIC
 21 REGISTRATION SYSTEMS, INC.
esmith@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net

22 EDGAR C. SMITH on behalf of Counter-Defendant MORTGAGE ELECTRONIC
 23 REGISTRATION SYSTEMS, INC.
esmith@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net

24 EDGAR C. SMITH on behalf of Counter-Defendant MORTGAGE ELECTRONIC

1 REGISTRATION SYSTEMS INC.
esmith@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net

2 EDGAR C. SMITH on behalf of Counter-Defendant PROF-2013-M4 LEGAL TITLE TRUST
esmith@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net

3 EDGAR C. SMITH on behalf of Counter-Defendant THE BANK OF NEW YORK MELLON
esmith@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net

4 EDGAR C. SMITH on behalf of Counter-Defendant U.S. BANK MORTGAGE, LLC
esmith@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net

5 EDGAR C. SMITH on behalf of Counter-Defendant U.S. BANK NATIONAL ASSOCIATION
esmith@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net

6 EDGAR C. SMITH on behalf of Counter-Defendant U.S. BANK, N.A.
esmith@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net

7 EDGAR C. SMITH on behalf of Counter-Defendant U.S. BANK, NATIONAL ASSOCIATION
esmith@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net

8 EDGAR C. SMITH on behalf of Cross Defendant OCWEN LOAN SERVICING, LLC
esmith@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net

9 EDGAR C. SMITH on behalf of Cross Defendant U.S. BANK NATIONAL ASSOCIATION
esmith@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net

10 EDGAR C. SMITH on behalf of Cross Defendant U.S. BANK, N.A.
esmith@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net

11 EDGAR C. SMITH on behalf of Defendant BAC HOME LOANS SERVICING LP
esmith@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net

12 EDGAR C. SMITH on behalf of Defendant BANK OF AMERICA, N.A.
esmith@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net

13 EDGAR C. SMITH on behalf of Defendant CHASE BANK USA, N.A.
esmith@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net

14 EDGAR C. SMITH on behalf of Defendant DEUTSCHE BANK NATIONAL TRUST
esmith@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net

15 EDGAR C. SMITH on behalf of Defendant DEUTSCHE BANK NATIONAL TRUST
 COMPANY
esmith@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net

16 EDGAR C. SMITH on behalf of Defendant HSBC BANK USA NATIONAL ASSOCIATION

1 esmith@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net
 2 EDGAR C. SMITH on behalf of Defendant MORTGAGE ELECTRONIC REGISTRATION
 SYSTEMS, INC.
 3 esmith@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net
 4 EDGAR C. SMITH on behalf of Defendant NATIONSTAR MORTGAGE, LLC
esmith@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net
 5 EDGAR C. SMITH on behalf of Defendant OCWEN LOAN SERVICING, LLC
esmith@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net
 6 EDGAR C. SMITH on behalf of Defendant U.S. BANK MORTGAGE, LLC
esmith@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net
 7 EDGAR C. SMITH on behalf of Defendant U.S. BANK NATIONAL ASSOCIATION
esmith@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net
 8 EDGAR C. SMITH on behalf of Defendant U.S. BANK, N.A.
esmith@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net
 9 EDGAR C. SMITH on behalf of Defendant USROF III LEGAL TITLE TRUST 2015-1
esmith@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net
 10 EDGAR C. SMITH on behalf of Defendant WELLS FARGO BANK, N.A.
esmith@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net
 11 EDGAR C. SMITH on behalf of Defendant WELLS FARGO, NATIONAL ASSOCIATION
esmith@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net
 12 EDGAR C. SMITH on behalf of Defendant WESTERN PROGRESSIVE NEVADA INC.
esmith@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net
 13 EDGAR C. SMITH on behalf of Plaintiff CHRISTIANA TRUST
esmith@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net
 14 EDGAR C. SMITH on behalf of Plaintiff DEUTSCHE BANK NATIONAL TRUST
 COMPANY
esmith@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net
 15 EDGAR C. SMITH on behalf of Plaintiff NATIONSTAR MORTGAGE, LLC
esmith@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net
 16 EDGAR C. SMITH on behalf of Plaintiff PROF-2013-M4 LEGAL TITLE TRUST
esmith@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net
 17 EDGAR C. SMITH on behalf of Plaintiff SELECT PORTFOLIO SERVICING INC.

1 esmith@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net
 2 EDGAR C. SMITH on behalf of Plaintiff SELECT PORTFOLIO SERVICING, LLC
esmith@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net
 3 EDGAR C. SMITH on behalf of Plaintiff THE BANK OF NEW YORK MELLON
esmith@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net
 4 EDGAR C. SMITH on behalf of Plaintiff U.S. BANK NATIONAL ASSOCIATION
esmith@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net
 5 EDGAR C. SMITH on behalf of Plaintiff U.S. BANK TRUST, N.A.
esmith@wrightlegal.net, nvbkfiling@wrightlegal.net;jcraig@wrightlegal.net
 6 KEVIN S. SODERSTROM on behalf of Defendant PNC FINANCIAL SERVICES GROUP,
 INC.
nvbk@tblaw.com
 7
 8 ARIEL E. STERN on behalf of Creditor BANK OF AMERICA, N.A.
ariel.stern@akerman.com, Darren.brenner@akerman.com;akermanlas@akerman.com
 9
 10 ARIEL E. STERN on behalf of Creditor WELLS FARGO BANK, N.A.
ariel.stern@akerman.com, Darren.brenner@akerman.com;akermanlas@akerman.com
 11
 12 ARIEL E. STERN on behalf of Defendant BANK OF NEW YORK MELLON
ariel.stern@akerman.com, Darren.brenner@akerman.com;akermanlas@akerman.com
 13
 14 ARIEL E. STERN on behalf of Defendant NATIONSTAR MORTGAGE LLC
ariel.stern@akerman.com, Darren.brenner@akerman.com;akermanlas@akerman.com
 15
 16 ARIEL E. STERN on behalf of Plaintiff BANK OF NEW YORK MELLON
ariel.stern@akerman.com, Darren.brenner@akerman.com;akermanlas@akerman.com
 17
 18 ARIEL E. STERN on behalf of Plaintiff BAYVIEW LOAN SERVICING, LLC
ariel.stern@akerman.com, Darren.brenner@akerman.com;akermanlas@akerman.com
 19
 20 ARIEL E. STERN on behalf of Plaintiff PENNYMAC HOLDINGS, LLC
ariel.stern@akerman.com, Darren.brenner@akerman.com;akermanlas@akerman.com
 21
 22 ARIEL E. STERN on behalf of Plaintiff PENNYMAC LOAN TRUST 2012-NPL
ariel.stern@akerman.com, Darren.brenner@akerman.com;akermanlas@akerman.com
 23
 24 U.S. TRUSTEE - LV - 7
USTPRegion17.LV.ECF@usdoj.gov
 ACE C VAN PATTEN on behalf of Counter-Claimant FEDERAL NATIONAL MORTGAGE
 ASSOCIATION

1 efile@brookshubley.com
 2 ACE C VAN PATTEN on behalf of Counter-Defendant THE BANK OF NEW YORK
 MELLON
 3 efile@brookshubley.com
 4 ACE C VAN PATTEN on behalf of Defendant FEDERAL NATIONAL MORTGAGE
 ASSOCIATION
 5 efile@brookshubley.com
 6 ACE C VAN PATTEN on behalf of Defendant THE BANK OF NEW YORK MELLON
avanpatten@brookshubley.com
 7 ACE C VAN PATTEN on behalf of Interested Party BROOKS HUBLEY, LLP
efile@brookshubley.com
 9 ACE C VAN PATTEN on behalf of Intervenor-Defendant FEDERAL NATIONAL
 MORTGAGE ASSOCIATION
 10 efile@brookshubley.com
 11 SHADD A. WADE on behalf of Plaintiff BANK OF NEW YORK MELLON
swade@wrightlegal.net
 12 SHADD A. WADE on behalf of Plaintiff HSBC BANK USA NATIONAL ASSOCIATION
swade@wrightlegal.net
 14 SHADD A. WADE on behalf of Plaintiff THE BANK OF NEW YORK MELLON
swade@wrightlegal.net
 15 GREGORY L. WILDE on behalf of Defendant PNC FINANCIAL SERVICES GROUP, INC.
nvblk@tblaw.com, gwareing@tblaw.com; llcano@tblaw.com; klgamboa@tblaw.com
 17 DONALD H. WILLIAMS on behalf of Defendant REPUBLIC SILVER STATE DISPOSAL,
 INC.
 18 DonaldHWilliamsLaw@gmail.com, taylorsellers@gmail.com
 19 DONALD H. WILLIAMS on behalf of Defendant REPUBLIC SILVER STATE SERVICES
DonaldHWilliamsLaw@gmail.com, taylorsellers@gmail.com
 20 DONALD H. WILLIAMS on behalf of Intervenor-Defendant REPUBLIC SILVER STATE
 DISPOSAL, INC.
DonaldHWilliamsLaw@gmail.com, taylorsellers@gmail.com
 22 NATALIE L. WINSLOW on behalf of 3rd Party Plaintiff BANK OF AMERICA, N.A.
natalie.winslow@akerman.com,
ariel.stern@akerman.com; darren.brenner@akerman.com; akermanlas@akerman.com; erin.abugow@akerman.com

1 NATALIE L. WINSLOW on behalf of Counter-Claimant BANK OF AMERICA
 2 natalie.winslow@akerman.com,
ariel.stern@akerman.com; darren.brenner@akerman.com; akermanlas@akerman.com; erin.abugo
 3 w@akerman.com

4 NATALIE L. WINSLOW on behalf of Counter-Claimant BANK OF AMERICA, N.A
 5 natalie.winslow@akerman.com,
ariel.stern@akerman.com; darren.brenner@akerman.com; akermanlas@akerman.com; erin.abugo
 6 w@akerman.com

7 NATALIE L. WINSLOW on behalf of Counter-Claimant BANK OF AMERICA, N.A.
 8 natalie.winslow@akerman.com,
ariel.stern@akerman.com; darren.brenner@akerman.com; akermanlas@akerman.com; erin.abugo
 9 w@akerman.com

10 NATALIE L. WINSLOW on behalf of Counter-Claimant DEUTSCHE BANK NATIONAL
 11 TRUST COMPANY
 12 natalie.winslow@akerman.com,
ariel.stern@akerman.com; darren.brenner@akerman.com; akermanlas@akerman.com; erin.abugo
 13 w@akerman.com

14 NATALIE L. WINSLOW on behalf of Counter-Claimant GREEN TREE SERVICING LLC
 15 natalie.winslow@akerman.com,
ariel.stern@akerman.com; darren.brenner@akerman.com; akermanlas@akerman.com; erin.abugo
 16 w@akerman.com

17 NATALIE L. WINSLOW on behalf of Counter-Claimant NATIONSTAR MORTGAGE LLC
 18 natalie.winslow@akerman.com,
ariel.stern@akerman.com; darren.brenner@akerman.com; akermanlas@akerman.com; erin.abugo
 19 w@akerman.com

20 NATALIE L. WINSLOW on behalf of Counter-Claimant NATIONSTAR MORTGAGE, LLC
 21 natalie.winslow@akerman.com,
ariel.stern@akerman.com; darren.brenner@akerman.com; akermanlas@akerman.com; erin.abugo
 22 w@akerman.com

23 NATALIE L. WINSLOW on behalf of Counter-Claimant PENNYMAC HOLDINGS, LLC
 24 natalie.winslow@akerman.com,
ariel.stern@akerman.com; darren.brenner@akerman.com; akermanlas@akerman.com; erin.abugo
w@akerman.com

1 NATALIE L. WINSLOW on behalf of Counter-Defendant BANK OF AMERICA, N.A.
 2 natalie.winslow@akerman.com,
ariel.stern@akerman.com; darren.brenner@akerman.com; akermanlas@akerman.com; erin.abugo
 3 w@akerman.com

4 NATALIE L. WINSLOW on behalf of Counter-Defendant BAYVIEW LOAN SERVICING
 LLC
 5 natalie.winslow@akerman.com,
ariel.stern@akerman.com; darren.brenner@akerman.com; akermanlas@akerman.com; erin.abugo
 6 w@akerman.com

7 NATALIE L. WINSLOW on behalf of Counter-Defendant LN MANAGEMENT LLC SERIES
 7205 VISTA BONITA
 8 natalie.winslow@akerman.com,
ariel.stern@akerman.com; darren.brenner@akerman.com; akermanlas@akerman.com; erin.abugo
 9 w@akerman.com

10 NATALIE L. WINSLOW on behalf of Counter-Defendant NATIONSTAR MORTGAGE, LLC
natalie.winslow@akerman.com,
ariel.stern@akerman.com; darren.brenner@akerman.com; akermanlas@akerman.com; erin.abugo
 11 w@akerman.com

12 NATALIE L. WINSLOW on behalf of Counter-Defendant PENNYMAC LOAN TRUST 2012-
 NPL1
natalie.winslow@akerman.com,
ariel.stern@akerman.com; darren.brenner@akerman.com; akermanlas@akerman.com; erin.abugo
 14 w@akerman.com

15 NATALIE L. WINSLOW on behalf of Counter-Defendant U.S. BANK NATIONAL
 ASSOCIATION
natalie.winslow@akerman.com,
ariel.stern@akerman.com; darren.brenner@akerman.com; akermanlas@akerman.com; erin.abugo
 17 w@akerman.com

18 NATALIE L. WINSLOW on behalf of Creditor BANK OF AMERICA, N.A.
natalie.winslow@akerman.com,
ariel.stern@akerman.com; darren.brenner@akerman.com; akermanlas@akerman.com; erin.abugo
 20 w@akerman.com

21 NATALIE L. WINSLOW on behalf of Creditor WELLS FARGO BANK, N.A.
natalie.winslow@akerman.com,
ariel.stern@akerman.com; darren.brenner@akerman.com; akermanlas@akerman.com; erin.abugo
 22 w@akerman.com

23 NATALIE L. WINSLOW on behalf of Cross-Claimant BANK OF AMERICA
natalie.winslow@akerman.com,

1 ariel.stern@akerman.com;darren.brenner@akerman.com;akermanlas@akerman.com;erin.abugo
 2 w@akerman.com

3 NATALIE L. WINSLOW on behalf of Cross-Claimant BANK OF AMERICA, N.A.
 4 natalie.winslow@akerman.com,
 5 ariel.stern@akerman.com;darren.brenner@akerman.com;akermanlas@akerman.com;erin.abugo
 6 w@akerman.com

7 NATALIE L. WINSLOW on behalf of Cross-Claimant BANK OF AMERICA, N.A.
 8 natalie.winslow@akerman.com,
 9 ariel.stern@akerman.com;darren.brenner@akerman.com;akermanlas@akerman.com;erin.abugo
 10 w@akerman.com

11 NATALIE L. WINSLOW on behalf of Cross-Claimant BANK OF NEW YORK MELLON
 12 natalie.winslow@akerman.com,
 13 ariel.stern@akerman.com;darren.brenner@akerman.com;akermanlas@akerman.com;erin.abugo
 14 w@akerman.com

15 NATALIE L. WINSLOW on behalf of Cross-Claimant GREEN TREE SERVICING LLC
 16 natalie.winslow@akerman.com,
 17 ariel.stern@akerman.com;darren.brenner@akerman.com;akermanlas@akerman.com;erin.abugo
 18 w@akerman.com

19 NATALIE L. WINSLOW on behalf of Cross-Claimant NATIONSTAR MORTGAGE LLC
 20 natalie.winslow@akerman.com,
 21 ariel.stern@akerman.com;darren.brenner@akerman.com;akermanlas@akerman.com;erin.abugo
 22 w@akerman.com

23 NATALIE L. WINSLOW on behalf of Cross-Claimant THE BANK OF NEW YORK MELLON
 24 natalie.winslow@akerman.com,
 ariel.stern@akerman.com;darren.brenner@akerman.com;akermanlas@akerman.com;erin.abugo
 w@akerman.com

1 NATALIE L. WINSLOW on behalf of Defendant BANK OF AMERICA NA
 2 natalie.winslow@akerman.com,
 3 ariel.stern@akerman.com; darren.brenner@akerman.com; akermanlas@akerman.com; erin.abugo
w@akerman.com

4 NATALIE L. WINSLOW on behalf of Defendant BANK OF AMERICA, N.A.
 5 natalie.winslow@akerman.com,
 6 ariel.stern@akerman.com; darren.brenner@akerman.com; akermanlas@akerman.com; erin.abugo
w@akerman.com

7 NATALIE L. WINSLOW on behalf of Defendant BANK OF NEW YORK MELLON
 8 natalie.winslow@akerman.com,
 9 ariel.stern@akerman.com; darren.brenner@akerman.com; akermanlas@akerman.com; erin.abugo
w@akerman.com

10 NATALIE L. WINSLOW on behalf of Defendant CITIBANK, N.A.
 11 natalie.winslow@akerman.com,
 12 ariel.stern@akerman.com; darren.brenner@akerman.com; akermanlas@akerman.com; erin.abugo
w@akerman.com

13 NATALIE L. WINSLOW on behalf of Defendant COUNTRYWIDE BANK, FSB
 14 natalie.winslow@akerman.com,
 15 ariel.stern@akerman.com; darren.brenner@akerman.com; akermanlas@akerman.com; erin.abugo
w@akerman.com

16 NATALIE L. WINSLOW on behalf of Defendant COUNTRYWIDE HOME LOANS, INC.
 17 natalie.winslow@akerman.com,
 18 ariel.stern@akerman.com; darren.brenner@akerman.com; akermanlas@akerman.com; erin.abugo
w@akerman.com

19 NATALIE L. WINSLOW on behalf of Defendant COUNTRYWIDE KB HOME LOANS, LLC
 20 natalie.winslow@akerman.com,
 21 ariel.stern@akerman.com; darren.brenner@akerman.com; akermanlas@akerman.com; erin.abugo
w@akerman.com

22 NATALIE L. WINSLOW on behalf of Defendant DEUTSCHE BANK NATIONAL TRUST
 23 COMPANY
natalie.winslow@akerman.com,
ariel.stern@akerman.com; darren.brenner@akerman.com; akermanlas@akerman.com; erin.abugo
w@akerman.com

24 NATALIE L. WINSLOW on behalf of Defendant GREEN TREE SERVICING LLC
natalie.winslow@akerman.com,
ariel.stern@akerman.com; darren.brenner@akerman.com; akermanlas@akerman.com; erin.abugo
w@akerman.com

1 NATALIE L. WINSLOW on behalf of Defendant GREEN TREE SERVICING, LLC
natalie.winslow@akerman.com,
2 ariel.stern@akerman.com;darren.brenner@akerman.com;akermanlas@akerman.com;erin.abugo
w@akerman.com

3 NATALIE L. WINSLOW on behalf of Defendant NATIONSTAR MORTGAGE LLC
4 natalie.winslow@akerman.com,
ariel.stern@akerman.com;darren.brenner@akerman.com;akermanlas@akerman.com;erin.abugo
5 w@akerman.com

6 NATALIE L. WINSLOW on behalf of Defendant NATIONSTAR MORTGAGE, LLC
7 natalie.winslow@akerman.com,
ariel.stern@akerman.com;darren.brenner@akerman.com;akermanlas@akerman.com;erin.abugo
8 w@akerman.com

9 NATALIE L. WINSLOW on behalf of Defendant SELECT PORTFOLIO SERVICING, INC.
10 natalie.winslow@akerman.com,
ariel.stern@akerman.com;darren.brenner@akerman.com;akermanlas@akerman.com;erin.abugo
w@akerman.com

11 NATALIE L. WINSLOW on behalf of Defendant THE BANK OF NEW YORK
12 natalie.winslow@akerman.com,
ariel.stern@akerman.com;darren.brenner@akerman.com;akermanlas@akerman.com;erin.abugo
13 w@akerman.com

14 NATALIE L. WINSLOW on behalf of Defendant THE BANK OF NEW YORK MELLON
15 natalie.winslow@akerman.com,
ariel.stern@akerman.com;darren.brenner@akerman.com;akermanlas@akerman.com;erin.abugo
w@akerman.com

16 NATALIE L. WINSLOW on behalf of Defendant THE BANK OF NEW YORK MELLON
17 TRUST
18 natalie.winslow@akerman.com,
ariel.stern@akerman.com;darren.brenner@akerman.com;akermanlas@akerman.com;erin.abugo
w@akerman.com

19 NATALIE L. WINSLOW on behalf of Defendant U.S. BANK NATIONAL ASSOCIATION
20 natalie.winslow@akerman.com,
ariel.stern@akerman.com;darren.brenner@akerman.com;akermanlas@akerman.com;erin.abugo
21 w@akerman.com

22 NATALIE L. WINSLOW on behalf of Defendant WILMINGTON TRUST, N.A.
23 natalie.winslow@akerman.com,
ariel.stern@akerman.com;darren.brenner@akerman.com;akermanlas@akerman.com;erin.abugo
w@akerman.com

24 NATALIE L. WINSLOW on behalf of Interested Party BAYVIEW LOAN SERVICING, LLC

1 natalie.winslow@akerman.com,
 2 ariel.stern@akerman.com; darren.brenner@akerman.com; akermanlas@akerman.com; erin.abugo
w@akerman.com

3 NATALIE L. WINSLOW on behalf of Interested Party NATIONSTAR MORTGAGE, LLC
 4 natalie.winslow@akerman.com,
ariel.stern@akerman.com; darren.brenner@akerman.com; akermanlas@akerman.com; erin.abugo
w@akerman.com

5 NATALIE L. WINSLOW on behalf of Interested Party PENNYMAC LOAN SERVICES, LLC
 6 natalie.winslow@akerman.com,
ariel.stern@akerman.com; darren.brenner@akerman.com; akermanlas@akerman.com; erin.abugo
w@akerman.com

7 NATALIE L. WINSLOW on behalf of Plaintiff ALESSI & KOENIG, LLC
 8 natalie.winslow@akerman.com,
ariel.stern@akerman.com; darren.brenner@akerman.com; akermanlas@akerman.com; erin.abugo
w@akerman.com

9 NATALIE L. WINSLOW on behalf of Plaintiff BANK OF NEW YORK MELLON
 10 natalie.winslow@akerman.com,
ariel.stern@akerman.com; darren.brenner@akerman.com; akermanlas@akerman.com; erin.abugo
w@akerman.com

11 NATALIE L. WINSLOW on behalf of Plaintiff BAYVIEW LOAN SERVICING, LLC
 12 natalie.winslow@akerman.com,
ariel.stern@akerman.com; darren.brenner@akerman.com; akermanlas@akerman.com; erin.abugo
w@akerman.com

13 NATALIE L. WINSLOW on behalf of Plaintiff LN MANAGEMENT LLC SERIES 7205
 14 VISTA BONITA
natalie.winslow@akerman.com,
ariel.stern@akerman.com; darren.brenner@akerman.com; akermanlas@akerman.com; erin.abugo
w@akerman.com

15 NATALIE L. WINSLOW on behalf of Plaintiff PENNYMAC HOLDINGS, LLC
 16 natalie.winslow@akerman.com,
ariel.stern@akerman.com; darren.brenner@akerman.com; akermanlas@akerman.com; erin.abugo
w@akerman.com

17 NATALIE L. WINSLOW on behalf of Plaintiff PENNYMAC LOAN TRUST 2012-NPL1
 18 natalie.winslow@akerman.com,
ariel.stern@akerman.com; darren.brenner@akerman.com; akermanlas@akerman.com; erin.abugo
w@akerman.com

19 NATALIE L. WINSLOW on behalf of Plaintiff U.S. BANK NATIONAL ASSOCIATION
 20 natalie.winslow@akerman.com,

1 ariel.stern@akerman.com;darren.brenner@akerman.com;akermanlas@akerman.com;erin.abugo
2 w@akerman.com

3 MICHAEL B WIXOM on behalf of Creditor 2010-1 CRE VENTURE, LLC
4 mbw@slwlaw.com, eft@slwlaw.com

5 ANTHONY A. ZMAILA on behalf of Interested Party MICHAEL L. FORCHE
6 bkecf.aaznevada@gmail.com,
7 tony@aaznevada.com;pat@aaznevada.com;peter@aaznevada.com;evan@aaznevada.com

8
9 An Employee of ALVERSON, TAYLOR,
10 MORTENSEN & SANDERS

11 \atms-fs2\data\kurt.grp\CLIENTS\22700\22770 - 10852 Fishers Island\pleadings\BK- Remand.doc

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13
14
15
16
17
18
19
20
21
22
23
24
ALVERSON, TAYLOR, MORTENSEN & SANDERS
LAWYERS
7401 WEST CHARLESTON BOULEVARD
LAS VEGAS, NEVADA 89117-1401
(702) 384-7000